

COUNCIL POLICY



Policy name	Debt Recovery Policy
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Abstract

The purpose of this policy is to provide a framework to facilitate the timely, efficient and effective recovery of monies owed to Council

Dates Enter dates as per following example:	Policy or amendment approved Policy or amendment takes effect Policy is due for review (up to 4 years)	18 Dec 2019 19 Dec 2019 19 Dec 2022
Endorsed by	Leadership Team	
Approved by	Gunnedah Shire Council, at its Ordinary Meeting of Council held 18 Dec 2019 Resolution number: 29.12/19	
Policy Custodian	Chief Financial Officer	
Relevant to	Ratepayers and residents, General Debtors, Council's Debt Recovery Agents, Absentee Owners, Property Management Agents and those with permitted credit accounts.	
Superseded Policies	Debt Recovery Policy adopted Minute No. 81 of Ordinary Meeting held on 17 October 2012; Debt Recovery – Rates, Charges and Other Debtors Policy adopted Minute No. 138.5 of Ordinary Meeting held on 17 December 2008; Rates – Rate Relief Due to Hardship Policy adopted Minute No. 155.2 of Ordinary Meeting held on 19 December 2001; and Rates – Processing Pensioner Rebate Applications Policy adopted Minute No. 406 of Ordinary Meeting held on 20 March 1996.	
Related documents	Council's Instrument of Delegation to the General Manager Council's Operational Plan Office of Local Government, Debt Management and Hardship Guidelines, November 2018	
Related legislation	The Local Government Act 1993 (NSW); The Local Government (General) Regulations 2005; The Trade Practices Act 1974 (s.60); and the Privacy and Personal Information Protection Act 1998 (NSW)	

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1. Purpose

The purpose of this policy is to provide a framework to facilitate the timely, efficient and effective recovery of monies owed to Council.

2. Scope

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

3. Definitions

Term	Definition
Ratepayer	Includes the Crown in respect of rateable land owned by the Crown and means: <ul style="list-style-type: none">(a) an owner in any case where the Local Government Act 1993, provides that a rate is to be paid to the council by the owner; and(b) a holder of a lease in any case where the Local Government Act 1993, provides that a rate is to be paid to the council by the holder of the lease.
Pensioner	An eligible pensioner as defined in Regulation 134 of the Local Government (General) Regulations 2005 (NSW).
Notice of Demand	Demand Letter from Council's Debt Recovery Agent.
Statement of Liquidated Claim	Is a legal document which outlines to the ratepayer the following: <ul style="list-style-type: none">(a) that a claim has been made to the Court for the recovery of monies;(b) who has initiated the claim;(c) who the claim is against;(d) the monetary value of the claim; and(e) time period available to relinquish the debt.
Judgment	A finding by a Court that monies are owed by a debtor to a creditor.
Writ of Execution	A method of judgment enforcement whereby the Sheriff attends the debtor's premises on behalf of the creditor to seize goods of value for sale at public auction (the proceeds of which are given to the creditor up to the amount of the judgment).
Garnishee	A method of judgment enforcement by which monies owing to the debtor can be seized by the creditor. The most common funds seized are monies in bank accounts or wages.

Bankruptcy	A method of judgment enforcement whereby a trustee is appointed to oversee the debtor's financial affairs. Any funds raised are distributed to creditors in accordance with the Bankruptcy Act.
Winding Up	Same as bankruptcy but for companies (as opposed to individuals).
Examination	A method of judgment enforcement whereby debtors can be examined regarding their financial affairs. If they fail to appear at an examination hearing they can be arrested.
Rent for Rates	Section 569 of the Local Government Act 1993 allows Councils to order tenants of properties with overdue rates to pay rent to Councils in lieu of unpaid rates under specific circumstances.
Costs	Amounts incurred by Council in recovering overdue debts (eg. Court professional costs) which can be legally recovered from the debtor.
Sale of Land	In accordance with section 713 of the Local Government Act 1993, Council has the authority to sell land which has any unpaid rates or charges for more than 5 years.

4. Policy principles

Council acknowledges that it has a responsibility to ensure that the collection of monies owing to it is carried out in an efficient, effective and transparent manner. Council will commit to ensuring that all persons are treated fairly and consistently, and given due consideration and compassion to those who are suffering genuine financial hardship. All matters will be administered with confidentiality and respect.

5. Policy statement

Recovery action may commence when rates, charges, fees or other debts to Council remain unpaid beyond the due date.

5.1 Rates and Charges

Rates and charges notices are issued in July each year in accordance with Section 562 of the Local Government Act, 1993 and are payable in four instalments on 31 August, 30 November, 28 February and 31 May each financial year.

If rates and/or charges remain unpaid for 14 days after the due date of quarterly instalments, Council will issue a Reminder Letter for the outstanding amount. The Reminder Letter will request payment within 14 days from the posting date of the letter.

If rates and charges remain outstanding, and no suitable arrangement has been agreed, Council will refer the matter to Council's debt recovery agency.

5.2 Water and Sewer Usage Charges

If water and/or sewer charges remain unpaid for 14 days after the due date of the account, Council will issue a Reminder Letter for the outstanding amount. The Reminder Letter will request payment within 14 days from the posting date of the letter.

If water and/or sewer charges remain outstanding, and no suitable arrangement has been agreed, Council will refer the matter to Council's debt recovery agency.

In the event that charges on water accounts remain overdue for a period in excess of twelve (12) months, Council may manage the water connection at the property in accordance with the provision of the Water Management (General) Regulation 2018.

5.3 Sundry Debts

If a sundry debt remains unpaid, a second and third statement will be forwarded as a reminder.

If the customer account remains outstanding in excess of 60 days, further credit to the customer will be withdrawn until payment is made or a suitable arrangement has been agreed.

Once an account has amounts great than 90 days in arrears, Council will refer the matter to Council's debt recovery agency.

5.4 Debt Recovery Action

Council officers will exhaust all reasonable avenues of recovery before initiating debt recovery action. Once a debt has been referred to by Council, the debt collection agency will issue a Letter of Demand. This will request payment be made within 14 days from the date of letter, or legal action will commence.

If full payment or a suitable arrangement for payment has not been put entered in to by the due date as stated on the Letter of Demand, then Council's Debt Recovery Agent may issue and serve a Statement of Liquidated Claim.

If there is no response to the Statement of Liquidated Claim within 28 days, Council's Debt Recovery Agent may apply for default Judgment which would be recorded against the nonpayer's credit file by a credit reporting agency.

Following Judgment, Council's Debt Recovery Agents may then employ one or more of the following options in order to recover the outstanding debt:

- (a) Writ against the property;
- (b) Examination;
- (c) Garnishee of bank accounts;
- (d) Garnishee of wages or other income;
- (e) Bankruptcy;
- (f) Winding up of companies;
- (g) Rent for Rates under s569 of the Local Government Act 1993;
- (h) Or any other such action as advised to Council.

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. Any rate payer 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.

5.5 Sale of Land for Unpaid Rates

As a last resort, where rates and/or charges remain unpaid for greater than five (5) years, or one (1) year in the case of vacant land, Council will begin proceedings to recover the outstanding amounts through a Sale of Land for Unpaid Rates in accordance with Section 713 of the Local Government Act 1993.

5.6 Interest

Interest will accrue on all outstanding amounts at the interest rate stipulated annually in the Fees and Charges section of Council's Operational Plan and in accordance with Section 566 of the Local Government Act 1993.

5.7 Periodical Payments

In accordance with the provisions of Section 564 of the Local Government Act 1993, customers who are unable to pay rates, charges, fees or other debts to Council by the due date, either because of reasons beyond their control or because payment would cause hardship, may apply to enter into an Agreement with Council to make periodical payments.

In order for such an Agreement to be considered, a 'Payment Arrangement Form' needs to be completed subject to mutual agreement of payment amounts (Annexure A).

Payments made under such an Agreement should adequately repay the 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 that cannot be achieved;
- c) in up to one (1) year provided that subsequent rate instalments that may become due in that time frame are paid or are incorporated into the total repayment amount.

Section 564(2) of the Local Government Act, 1993 enables Council to write off or reduce interest accrued on rates or charges if the person complies with all of the requirements of an Agreement made with Council as to periodical payments of those outstanding debts.

If a customer fails to meet the terms of an Agreement without notice, the Agreement shall become void immediately and the full amount of the outstanding debt, including accrued interest shall be due and payable. Recovery action shall be instigated immediately for the recovery of the amount due.

5.8 Relief and Assistance

Council recognises that due to exceptional circumstances, our customers may at times experience genuine hardship resulting in difficulty paying rates, charges, fees or other debts to Council. The Local Government Act 1993 and the Local Government (General) Regulation 2005 allow Council to provide assistance to ratepayers and customers. Please refer to Council's Hardship Policy for more information.

6. Accountability, roles and responsibilities

6.1 Delegation – General Manager

In accordance with the Instrument of Delegation to the General Manager.

6.2 Policy Custodian - Chief Financial Officer

The Policy Custodian is the officer responsible for overseeing policy compliance and the policy review process.

6.3 Implementation responsibility: Co-Ordinator - Finance

Is responsibility for all aspects of policy implementation, unless appropriately delegated to another officer. These responsibilities include being the primary contact point for advice on the policy and/or its implementation; establishing and maintaining Council's records in relation to the policy; proposing amendments to the policy custodian; and managing the consultation processes.

6.4 Debt Recovery Agency

The process of debt recovery requires a certain level of expertise and would in most cases, best be managed by a professional Debt Recovery Agent. Where utilised, any such Agent instructed to assist Council in their debt recovery processes will need to work in accordance with this Policy and Council's delegation structure.

7. Version control and change history

Date	Version	Approved by & resolution no.	Amendment
17 Oct 2012	V4.1	2012/081	Adopted Debt Recovery Policy.
06 Sep 2019	V5.01		Separating the Debt Recovery & Hardship policies
23 Sep 2019	V5.02		Wording amendments and addition of flowchart
18 Dec 2019	V5.02	29.12/19	Adopted by Council.

Annexures

Annexure A – Payment Arrangement Form

Annexure B – Debt Recovery Process Flowchart

Payment Arrangement Form

LAST UPDATED 26 MARCH 2019

Date:

APPLICANT DETAILS

Name(s):

Mailing Address:

Suburb: State: Postcode:

Telephone: Mobile:

Email:

PROPERTY DETAILS

Property Address:

I elect to pay the following accounts under a payment arrangement:

Rates Account No:

Water Account No:

Debtor Account No:

PAYMENT DETAILS

The amounts for each account are to be deducted as per the following:

Rates Account: \$ Weekly Fortnightly Monthly

Water Account: \$ Weekly Fortnightly Monthly

Debtor Account: \$ Weekly Fortnightly Monthly

Commencement Date:

I require this Payment Arrangement to remain continuous.

Note: You acknowledge that interest is accruing at 7.5% pa calculated daily on the outstanding balance. You understand that should you default on any agreed repayment without notice to Council, that the full amount of the outstanding debt will become due and payable immediately and that Gunnedah Shire Council may take legal action to recover the debt.

DECLARATION

I give permission for the above business/organisation details to be used collectively in the promotion of Gunnedah Shire through Council's website and periodic publications.

Name (print):

Signature: Date:

Debt recovery process flowchart

	Debt recovery process	Council / delegated authority	Debtor
1	Rate and charges notice s562 1 August 31 days	<ul style="list-style-type: none"> Flexible payment options Financial hardship policy Debt recovery policy Debt communication 	<ul style="list-style-type: none"> Contact Council Ensure contact details are correct Payment of Council debt <ul style="list-style-type: none"> Fixed Flexible Apply for hardship arrangements
2	Rate and charges instalment notice s562 30 days		
3	Notification of outstanding debt 14 days	<ul style="list-style-type: none"> Confirm debtor contact details are correct Debt review Early dispute Resolution (EDR) Financial Counsellors 	<ul style="list-style-type: none"> As above Payment of council debt, via agreement
4	"Notice of Demand" Final reminder notification 14 days	<ul style="list-style-type: none"> As above Develop payment agreement s564 Defer payment requirements, s607 Write off interest, debt, s564, s567, s607, c/131 Refer for legal action if not paid Sale of land, s713 	<ul style="list-style-type: none"> As above
5	Statement of claim 28 days	<ul style="list-style-type: none"> Debt review File claim Process claim Report 	<ul style="list-style-type: none"> As above
6	Notice of motion default judgment		Quarterly payment by: <ul style="list-style-type: none"> 31 August 30 November 28 February 31 May
7	Recovery action Weeks, months, years		

Note: Red indicates action referred to the NSW Local Courts, whereby rates, charges and fees remain unpaid after a final reminder notification.