

POLICY NAME: Rates and Charges - Debt Recovery Policy

POLICY REF: R05

MEETING ADOPTED: 14 December 2017
Resolution No. 141217/22

POLICY HISTORY:



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OBJECTIVE

To establish guidelines for the efficient and effective collection of outstanding rates and charges.

To fulfil the statutory requirements of the Local Government Act, 1993, (LGA) in relation to the recovery of outstanding rates and charges.

To ensure the integrity and confidentiality of proceedings for the debtor and Council.

POLICY

Council acknowledges that ratepayers will, for various reasons from time to time, fail to pay their rates and charges when they become due and payable to Council.

It is not Council's intention to cause hardship to any ratepayer through our debt recovery procedures and consideration will be given to acceptable arrangements to clear the debt where possible.

This Policy establishes the framework for recovery action of all amounts due to Council. It also provides the process for debt recovery to ensure the prompt recovery of all amounts due to Council.

1. Issue of Rates and Charges Notices

Rates and charges notices are issued at least 30 days prior to the due date in accordance with Section 562 of the LGA.

Rates are payable in full on 31 August or by quarterly instalments. Quarterly Instalments are due on the following dates each year:

- 31 August
- 30 November
- 28 February
- 31 May

2. Interest on Overdue Rates and Charges

Interest is charged on overdue rates and charges in accordance with Council's adopted Fees and Charges.

Interest is not charged on legal costs. However, if legal costs are incurred, payments are allocated to legal costs as the first priority for repayment.

Section 564 and 567 of the LGA allows Council to provide assistance to ratepayers by writing off accrued interest charges. All applications for this assistance must be made in accordance with Council's Financial Assistance (Hardship) – Rates and Charges Policy.

3. Issue of Overdue Reminder Notices

A rates reminder letter will be issued within 14 days after the due date of an instalment to those ratepayers who have an outstanding balance greater than \$250 and have not made a previous satisfactory payment arrangement with Council.

The reminder gives the ratepayer the balance outstanding and the option of paying the debt off by means of a periodical payment arrangement.

The reminder letter will request payment within 14 days from the posting date of the letter.

If a reminder letter does not result in payment in full or a suitable payment arrangement, the debt will be forwarded to Council's debt collection agency for the issue of a letter of demand.

4. Payment Arrangements

Arrangements may be entered into with all ratepayers in accordance with Section 564 of the LGA.

It is Council's intention to have a maximum period of 24 months for which debts may be paid under a suitable arrangement, including current levies and interest during the period of the arrangement.

Any requests for arrangement periods that exceed 24 months must be in accordance with Council's Financial Assistance (Hardship) – Rates and Charges Policy.

Requests for payment arrangements or extensions can be made over the phone with authorised Council staff or in writing. Payments can be made either weekly, fortnightly, monthly or by other suitable arrangements.

Interest will continue to accrue on overdue rates and charges during the period of arrangements.

Any requests for the waiving or writing off of interest charges under Section 564 or Section 567 of the LGA must be made in accordance with Council's Financial Assistance (Hardship) – Rates and Charges Policy.

Recovery action by Council will be deferred whilst the agreed payment arrangement is adhered to.

5. Broken Arrangements

Where a ratepayer fails to adhere to an agreement, Council will advise the ratepayer in writing or by phone that the agreement has defaulted and recovery action will commence or be continued unless the arrangement is brought up to date within seven days from the date of advice.

If legal action has been suspended due to the ratepayer entering into a payment arrangement and the agreement has not been met by the ratepayer, the legal action will be reactivated at the level when the suspension took place.

If a ratepayer has a history of broken arrangements, Council may refuse any requests for further payment agreements and demand payment in full.

6. Dishonoured Direct Debit Payments

Where a ratepayer has entered into a direct debit arrangement with Council to reduce their arrears and a payment is dishonoured without prior notification, Council will advise the ratepayer in writing or by phone of the dishonour and recovery action will commence or be continued unless the arrangement is brought up to date within seven days from the date of advice.

If direct debit payments are dishonoured on multiple occasions Council may cancel the direct debit agreement and will notify the ratepayer in writing.

If legal action has been suspended due to the ratepayer entering into a direct debit arrangement and the agreement has not been met by the ratepayer, the legal action will be reactivated at the level when the suspension took place.

7. Legal Action

If Council receives no response from the debtor after the due date of the reminder letter or the debtor defaults on a payment arrangement, Council may initiate legal action.

Any outstanding debts with a balance greater than \$1,000 will be forwarded to Council's debt collection agency for commencement of legal proceedings.

Legal action will be initiated with a Letter of Demand being sent by Council's debt collection agency to the debtor, giving them 14 days to make payment in full or enter into an acceptable payment arrangement.

If full payment is not received or a suitable payment arrangement entered into, a Statement of Claim will be issued for the arrears as at the date of issue and served.

Following expiration of the statutory period, to protect Council's interest in the matter and all available actions to recover the amount outstanding, if the debt is not cleared, a Notice of Motion Default Judgment for liquidated claim will be lodged.

Thereafter, recovery actions that will be considered include, but are not limited to:

- A garnishee of income (bank/wages/rent)
- Writ of Execution
- Examination Summons
- Statutory Demand
- Sale of Land for unpaid rates in accordance with Section 713 of the LGA.

Recovery action is not limited to the above methods. Each account will be individually assessed to determine the appropriate and most efficient method of recovery action.

Payment arrangements may still be accepted up to the point of a Statement of Liquidated Claim, thereafter all arrangement requests will be assessed individually and may require the signing of a Consent Order.

All legal costs and expenses incurred in recovering outstanding rates and charges shall be charged against the property in accordance with Section 605 of the LGA.

In accordance with Section 459 of the Corporations Act 2001, where the ratepayer is a company and has been served with a Statutory Demand and the ratepayer has not complied within the 21 day period, Council has the right to commence proceedings to have the debtor company wound up and a liquidator appointed.

All debts regarding the issue of a creditors' statutory demand must exceed the sum of \$2,000.

8. Sale of Land for Unpaid Rates and Charges

In accordance with Section 713 (2) of the LGA, Council may sell any land on which any rate or charge has remained unpaid for more than five years from the date on which it became payable.

Where any rate or charge remains unpaid on vacant land for more than one year, Council may proceed to sell the land if the total amount of unpaid rates or charges on the land exceeds the Valuer General's current valuation of the property.

If legal recovery attempts prove unsuccessful and a ratepayer falls into one of the above categories, a letter will be written to the ratepayer advising them that Council will consider sale of land due to unpaid rates and charges. The letter will be a final attempt to give the ratepayer an opportunity to enter into a suitable payment plan prior to a report to Council to consider the sale of land.

If a ratepayer does not respond to Council's final letter, a report shall be provided to Council.

The report will include a General Manager's Certificate certifying the following:

- What rates and charges are payable on the land
- When each rate was levied
- When each rate became due
- What rates and charges are overdue.

The report will also provide a detailed history of the circumstances of each case together with a recommendation in relation to the possible sale of the land to recover the overdue rates and charges.

BACKGROUND

This Policy has been developed to ensure a consistent approach in the recovery of outstanding rates and charges is applied across the organisation and to ensure ratepayers are aware of the debt recovery practices followed by Council.

DEFINITION

Ratepayer Person, persons or entity responsible for payment of the rates and / or charges levied on a property.

SCOPE OF POLICY

This policy applies to:

- Ratepayers of Ballina Shire
- Council employees
- Councillors

RELATED DOCUMENTATION

Related documents, policies and legislation:

- Local Government Act, 1993
- Financial Assistance (Hardship) – Rates and Charges Policy
- Hardship Rate Relief Application Form
- Fees and Charges

REVIEW

This policy is to be reviewed every four years.