

DEBT RECOVERY & HARDSHIP POLICY

Responsible Department: Financial Services
Responsible Section: Financial Services
Responsible Officer: Chief Financial Officer

Objective

The objective of this policy is to ensure the collection of rates, charges and debts owing to Council in a timely and consistent manner.

This policy does not apply to costs orders in litigation, which are dealt with by the Recovery of Costs Orders in Litigation Policy.

Introduction

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 integrity, confidentially, fairness and respect.

Policy

1. Definitions

Term	Meaning
Approval Authority	For debts of \$2,000 or less, the General Manager. For debts of \$2,000.01 or more, the elected body of Council.
Charge	A charge leviable and payable under the provisions of the <i>Local Government Act 1993</i> (NSW) or other such amount required by Council or other legislation to be paid to Council that is identified as a charge.
Commercially Unviable	A debt is commercially unviable when the cost of recovery significantly outweighs the likely amount expected to be recovered, rendering it not cost effective to recover the debt within the meaning of regulations 131 and 213 of the <i>Local Government (General) Regulations 2021</i> (NSW).
Debt	Rates, charges, fees, levies, or other amounts owing to Council.

Term	Meaning
Hardship	<p>Difficulty in paying a debt as a result of:</p> <ul style="list-style-type: none"> (a) Loss or change of income; (b) Illness; (c) Loss arising from an accident; (d) Natural disaster or adverse events; (e) Death in the family; (f) Separation, divorce, or other family crisis; (g) Family violence; and (h) Some other temporary financial difficulty due to loss of income or an increase in essential expenditure. <p>Hardship in this sense may be permanent or temporary.</p>
Periodic Payment Agreement	An agreement between a debtor and Council whereby a debtor makes regular equal payments of a portion of a debt towards payment of the debt.
Rate	Rates leviable and payable under the provisions of the <i>Local Government Act 1993</i> (NSW) and within the limitations established by the Independent Pricing and Regulatory Tribunal (IPART).
Recovery Action	Any course of action available to Council under this policy or at law to ensure and/or compel payment of debts owing to Council.
Waiver	A release from liability for payment of a debt, or a specified portion of a debt.
Writing off	Removing the amount of a debt, or a specified portion of the amount of a debt, from Council's financial documentation.

2. Recovery of Debts

- 2.1. Recovery action will commence when rates and/or charges are not paid by the due date for each quarterly instalment unless arrangements have been entered into to make periodical payments under Section 564 of the *Local Government Act 1993* (NSW).
- 2.2. Recovery action will commence when water service or usage charges (or both) are not paid by the due date unless arrangements have been entered into to make periodical payments under Section 357 of the *Water Management Act 2000* (NSW).
- 2.3. Recovery action will commence if other debts (other than amounts due from Government departments).

3. Water Flow Restriction

- 3.1. Council has a responsibility to ensure the recovery of outstanding water accounts to ensure the water fund has satisfactory cash flow to complete capital work and to ensure councils financials are being managed in accordance with section 8A.
- 3.2. Council aims to recover outstanding water charges through restriction of water supply.
- 3.3. Council will not restrict water supply for properties involving repayment arrangements and tenanted properties.
- 3.4. If an account should remain outstanding a water flow restrictor will be fitted in accordance with this policy and regulation 144 of the *Local Government Regulations 2021* (NSW) to restrict water use so as to maintain personal hygiene only.

Water Flow Restriction Pre-requisites

- 3.5. Council must first issue a Reminder Letter, which will:
 - (a) Be issued 14 days after due date of the account becoming due and to include a copy of this Policy and detail the outstanding amount.
 - (b) Allow 28 days to make payment or arrangements for a suitable payment plan.
- 3.6. If no payment is made within 28 days of the due date stated in the Reminder Letter, Council will issue a Final Notice and Intention to Restrict Flow, which will:
 - (a) Be issued 28 days after the date the Reminder Letter was issued (in circumstances where an account remains unpaid);
 - (b) Include a copy of the Reminder Letter and this Policy;
 - (c) Provide a "Notice of Intention to Restrict Flow" that will come into 7 days from the date of the Final Notice, without further notice;
 - (d) Be sent by registered mail or hand delivered;
 - (e) State that restrictors will only be avoided if balance of account paid in full or arrangements made; and
 - (f) Be filed on Councils Records Management System.
- 3.7. If there is no payment within seven (7) days of the date of the Final Notice, a Flow Restrictor will be installed, which will:
 - (a) Be installed on the existing water meter; and
 - (b) Restrict water flow to three (3) litres per minute.
- 3.8. The Flow Restrictor will be removed:
 - (a) On payment of the balance of the account in full; or
 - (b) On the parties entering into a satisfactory periodical payment agreement.
- 3.9. The removal of the flow restrictor will take place as soon as possible but within two (2) working days from clearance of funds.
- 3.10. Restrictors will be removed during normal working hours, unless otherwise instructed by the General Manger.
- 3.11. Disconnection from the water supply
 - (a) All services disconnected or restricted for non-payment of the account may be subject to a payment restriction fee, as set annually in Councils Fees and Charges, prior to services are reinstated. This fee will be charged by order of the General Manager.
 - (b) All disconnection/reconnection fees as well as the outstanding account must be paid in full before reconnection of the service.

Disconnection

- 3.12. Should a Flow Restrictor be tampered with, or an account be outstanding for six months after a flow restrictor has been fitted (that is, not paid or no repayment program negotiated), Council will issue a Notice to Disconnect.
- 3.13. A Notice to Disconnect will:
 - (a) Provide a written "Notice of Intention to Disconnect the Water Supply" seven (7) days from the date of this Notice, without further notice; and
 - (b) Be delivered by registered mail or hand delivered.

4. Compassionate Intervention

- 4.1. At any stage in the debt recovery process prior to legal action commencing, an early intervention may be made to ratepayers in a compassionate, rational attempt to assist in avoiding accumulating, unmanageable levels of debt and costly legal action.
- 4.2. An early intervention may be in the form of any combination of the following:
 - (a) letter;
 - (b) telephone call;
 - (c) SMS message;
 - (d) Email;
 - (e) Personal visit; or
 - (f) a combination of the above outlined in clause 4.2(a)-4.2(e).
- 4.3. For accounts that remain outstanding, despite legal action having been taken, a late intervention personal visit may be made to ratepayers to help resolve the situation.
- 4.4. Interventions can come from a Council officer (including a third-party agent contracted by Council).

5. Extra Charges

- 5.1. Overdue rates and water usage charges shall be set in accordance with the respective legislation by the maximum allowable under the legislation.

6. Concession for Home Dialysis Machines

- 6.1. Council will provide a concession of 30 kilolitres of water per rateable quarter (up to 120 kilolitres per financial year), pro-rated to each local resident required to use a dialysis machine in their home.
- 6.2. This concession will be in addition to any other concession, donations, agreements, or measures under this policy.
- 6.3. The concession will be granted on application, submitted in writing and supported by a letter from the resident's doctor verifying a home dialysis machine is in use at the property.
- 6.4. The General Manager may amend the application form on an as needs basis and replace it as an attachment to the Policy without a resolution of Council.

7. Agreements for Periodical Payments

- 7.1. Council may enter into periodic payment arrangements with debtors.
- 7.2. Council may enter into periodic payment arrangements with debtors in the following circumstances:
 - (a) Hardship; or
 - (b) Other reasons beyond the debtor's control that impact payment.
- 7.3. If a debtor fails to meet the terms of an agreement, the agreement shall be terminated, and the full amount of the outstanding debt and accrued interest shall be immediately due and payable. Recovery action shall commence immediately for amount due.
- 7.4. If a debtor fails to meet the terms of an agreement and the agreement is terminated and the premises previously had a water flow restrictor installed in relation to the debt, the water flow restrictor will be re-installed seven (7) days following an additional Notice to Install being issued.

8. Waiver by Resolution or by Order

- 8.1. Debts may be waived in accordance with this policy and law.
- 8.2. Waiver of debts is discretionary, unless otherwise required by law.
- 8.3. Debts may be waived for the following reasons:
 - (c) Hardship; or
 - (d) Commercial Unviability.

Hardship

- 8.4. An approval authority may waive a debt or part of a debt, other than rates and charges, on the basis of hardship in accordance with section 610E of the *Local Government Act* and this policy.

Commercial Unviability

- 8.5. An approval authority may waive a debt or part of a debt on the basis of commercial unviability in accordance with this policy.

Writing Off

- 8.6. Where:
 - (e) A debt is waived for hardship or commercial unviability; and
 - (f) The approval authority forms the view, on reasonable grounds, that it would not be cost effective to recover the debt; or
 - (g) One of the other provisions of regulations 131(4) or 213(5) of the *Local Government (General) Regulations 2021 (NSW)* apply; then
 - (h) The approval authority is to write off the debt in accordance with those regulations.
- 8.7. Clause 8.5 above applies to part of a debt as well as the whole debt.

Interest

- 8.8. Where a debt is waived and written off for commercial unviability or hardship, it and any interest payable will be written off in accordance with regulations 131 and 213 of the *Local Government (General) Regulations 2021 (NSW)*, where those regulations are applicable.

9. Waiver of Accrued Interest

- 9.1. An approval authority can waive accrued interest under the hardship provisions of the *Local Government Act 1993 (NSW)*, or the commercial unviability provisions of the Policy, or both.

10. Applications

- 10.1. Where a debtor seeks a relief under this policy, they must apply to Council.
- 10.2. Applications must be made in the prescribed form, (Application for Consideration of Hardship).
- 10.3. Applications must include, at a minimum:
 - (a) The prescribed application form, fully completed;
 - (b) Evidence of hardship, such as:
 - (i) Bank statements;
 - (ii) Medical certificates;
 - (iii) Employment correspondence;
 - (iv) Tax returns;
 - (v) Statutory declarations explaining circumstances;
 - (vi) Evidence of Centrelink, Veterans Affairs, or other Government benefits;
 - (vii) Letter from financial counsellor or other assistance service; or

(viii) Other relevant evidence of hardship.

10.4. Whilst applications may be made at any time, it is preferable that an application be made as soon as the hardship becomes known to the debtor.

11. Assessment and Determination of Applications

11.1. The General Manager, or their delegate, will ensure that applications are assessed.

11.2. Assessments are to consider whether the applicant:

- (a) Receives Centrelink benefits;
- (b) Receives other benefits;
- (c) Could be considered in acute financial hardship (that is, they earn below 75% of the minimum weekly wage);
- (d) Is experiencing domestic or family violence involving financial abuse;
- (e) Has been referred by an accredited financial counsellor, welfare agency, or legal assistance service;
- (f) Has a payment history that indicates that they have difficulty in meeting payments in the past;
- (g) Has appropriately completed the application form; and/or
- (h) Has provided sufficient appropriate evidence of financial and/or other hardship.

11.3. Assessments are to consider the applicant's capacity to pay, including, but not limited to:

- (a) The debtor's total disposable income and current financial commitments;
- (b) The number of dependants and/or children the debtor has;
- (c) Advice from an accredited financial counsellor; or
- (d) A combination of the above outlined in clause 11.3(a)-11.3(c).

11.4. Following assessment, the approval authority must decide to:

- (a) Postpone the due date for payment of the debt, other than a rate, for an appropriate period in the circumstances;
- (b) Postpone interest accrual on the debt for an appropriate period in the circumstances;
- (c) Waive and write off the debt only in accordance with clause 8 above;
- (d) Waive and write off part of the debt in accordance with clause 8 above;
- (e) Waive interest on the debt in accordance with 9 above;
- (f) Waive extra charges in accordance with 8 above;
- (g) Offer or accept a periodical payment plan in accordance with 7 above; or
- (h) Refuse the application and uphold the debt.

11.5. The approval authority may decide to take more than one action under clause 11.4, except for clause 11.4 (h), which must be taken on its own.

11.6. Where the approval authority is the Council, the General Manager will ensure that a report is brought to an Ordinary Council Meeting, containing their recommendation, and attaching a copy of the assessment.

11.7. The report referred to in clause 11.6 should be brought in a confidential report and considered in a closed session of Council.

11.9. Where the approval authority is the General Manager and they have made a decision, an applicant can require the General Manager to bring a report to the elected Council containing the application, for the Council to make a determination.

12. Savings

12.1. Any existing agreements in relation to debts at the date of this policy's adoption will not be affected by the provisions of this policy.

References

- *Local Government Act (NSW) 1993* (NSW).
- *Local Government (General) Regulation 2021* (NSW).
- *Debt Management and Hardship Guidelines* (Office of Local Government NSW, 2018)

History

Minute Number	Meeting Date	Description of Change
115/2014	5 April 2016	Adopted
164/2017	15 August 2017	Reviewed
	2 June 2020	Rebranded
336/2022	October 18, 2022	Endorsed for Public Exhibition
362/2022	November 22, 2022	Adopted