



Asset & Financial Management

Debt Collection Procedure

Document Control Page

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Date: 24-11-01

Date: 25-11-01

Revision	Date	Author	Description
1.0	24-11-01	Paul Pay	First release.
1.1	11-04-05	Paul Pay	Updated for Debt Collection Agent
1.2	01-03-07	Paul Pay	Updated for Manager Financial Services

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1. OBJECTIVE

To establish a Debt Collection Procedure for both property related debts and other debts which maximises inward cash flow to Council and provides the flexibility to manage debts owed to Council in a sensitive manner and at minimal expense to both Council and the respective Debtor.

2. DEBT RECOVERY ACTION

For Debt Recovery purposes, Debts are considered to be overdue and are to be subject of Debt Recovery Action in the following circumstances:

- Rates and Annual Charges - seven (7) days after the instalment due date.
- Water Charges - seven (7) days after the instalment due date.
- Debtors – thirty-five (35) days after the invoice issue date.

Debt Recovery Action is either taken directly by Council Staff or by referral to Council's nominated Debt Collection Agent. Generally, Council will utilise its Debt Collection Agency to recover Debts owed to Council.

In circumstances where Council wishes to undertake its own Debt Collection Action the following must be observed.

1. Ensure a letter of authority nominating the Manager Financial Services as Council's Debt Collection Officer is duly signed by the General Manager or Director Corporate Services, (for the level of authority required) and is lodged at the local Court House. This enables the Manager Financial Services to act on Council's behalf and to sign documentation, eg Affidavits etc.
2. Obtain current fees and charges from the Court House.
3. Determine Jurisdiction. Any debt up to \$3,000 will be dealt with in the Small Claims Division of the Court. Any Debt over \$3,000 will be dealt with in the General Division of the Court. These are both dealt with by the Inverell Court House.
4. All forms lodged at the Court must be in the prescribed form.

3. LITIGATION

The General Manager or Director Corporate Services are required to authorise all litigation in respect of Debt Recovery action before commencement.

Council will utilise a Debt Collection Agency to act on council's behalf for Debt Recovery, unless otherwise determined.

When Council does not utilise its Debt Collection Agency, Council's Manager Financial Services will lodge the following documents with the local Court House:-

- Statement of Liquidated Claims
- Judgements
- Affidavits
- Writs

4. DEBT COLLECTION - AGENCY PROCEDURE

4.1 Recovery Process for Rates

Within fourteen (14) days after the overdue date, a reminder notice or statement of account is to be forwarded to the debtor.

Debts which remain outstanding twenty eight (28) days after the overdue date are to be referred to Council's Debt Collection Agent. The Debt Collection Agent will issue a Letter of Demand requesting payment of the amount in full or for the debtor to contact Council Staff to make alternative arrangements. This letter is to indicate that failure to pay will result in legal action being initiated to recover the debt, together with any statutory interest and legal charges.

Should a response not be received from the ratepayer as a result of the letter of demand legal action is to be commenced:

- where applicable, on-going credit for the ratepayer is to be suspended; and
- a list of such debts is to be prepared and submitted to the Director Corporate Services for authorisation, and forwarded to Council's Debt Collection Agent to issue a Statement of Liquidated Claim against the ratepayer.

4.2 Recovery Process for Water

Within fourteen (14) days after the overdue date, a reminder notice or statement of account is to be forwarded to the debtor.

Should a response not be received from the debtor as a result of the reminder notice, a Letter of Demand to be sent via a mail drop off, out to those that remain outstanding twenty-eight (28) days after the instalment date, requesting payment in full within two (2) days or water restrictions will apply imposing an eighty dollar (\$80.00) reconnection fee.

A list of water accounts remaining outstanding after thirty (30) days in excess of eighty (\$80) dollars is to be prepared and submitted to the Director Corporate Services for authorisation to commence water restrictions. Water Staff are utilised to restrict water meters. A letter is to be issued at the time of restriction indicating that restrictors will not be removed until the account is paid in full.

Should the account remain unpaid fourteen (14) days after restriction the account is to be referred to Council's Debt Collection Agent to issue a second Letter of Demand requesting payment of the amount in full or for the debtor to contact Council Staff to make alternative arrangements. This letter is to indicate that failure to pay will result in legal action being initiated to recover the debt, together with any statutory interest and legal charges.

A list of restricted water accounts remaining outstanding after forty four (44) days is to be prepared and submitted to the Director Corporate Services for authorisation, and forwarded to Council's Debt Collection Agent to issue a Statement of Liquidated Claim against the ratepayer.

Where applicable, on-going credit for the debtor is to be suspended.

4.3 Recovery Process for Sundry Debtors

Any debt owed to Council outside of the rates and water is classified as a Sundry Debtor.

Council's Debtor's Clerk will issue reminder letters after each statement run for accounts outstanding between 60-90 days and those outstanding in excess of 90 days.

Debts which remain outstanding ninety (90) days after the overdue date are to be referred to Council's Debt Collection Agent. Council's Debt Collection Agent will issue a Letter of Demand

requesting payment of the amount in full or for the debtor to contact Council Staff. This letter is to indicate that failure to pay will result in legal action being initiated to recover the debt, together with any statutory interest and legal charges.

Should a response not be received from the debtor as a result of the letter of demand legal action is to be commenced:

- where applicable, on-going credit for the ratepayer is to be suspended; and
- a list of such debts is to be prepared and submitted to the Director Corporate Services for authorisation, and forwarded to Council's Debt Collection Agent to issue a Statement of Liquidated Claim against the ratepayer.

4.5 Statement of Liquidated Claims (Summons)

For debt recovery purposes, a Statement of Liquidated Claims will be issued when:

- Rates and Annual Charges:- Two (2) instalments with a minimum amount of \$350.00 become outstanding.
- Water Charges:- Personal contact to be made for all accounts exceeding \$50.00 and water restrictions to be applied to debts exceeding \$80.00.
- Sundry Debtors:- All amounts outstanding after ninety (90) days with a minimum amount of \$250.00

Council's Debt Collection Agent will notify Council when they have filed documents with the Court.

Council's Debt Collection Agent will arrange for the Statement of Liquidated Claim to be served on Council's behalf. They will also notify Council when the summons has been served.

Council Staff may be required to assist the Process Server by providing some directions/maps to remote locations.

4.6 Service of Affidavit of Debt (Judgement)

A list of debts remaining outstanding twenty-eight (28) from the date of service of the summons is to be prepared and submitted to the Director Corporate Services for authorisation, and forwarded to Council's Debt Collection Agent to file judgement against the debtor.

4.7 Post Judgement Options

Once Council has obtained Judgement against the Debtor it has several further options to recover the outstanding amount. These options include:-

- Writ of Execution
- Court Instalment Orders
- Examination Summons
- Garnishee
- Bankruptcy Notice

Council's Debt Collection Agent should be consulted when selecting the best form of recovery action for each debtor in question.

Post Judgement Options can be implemented the day after Judgement has been obtained. Authorisation from the General Manager or Director Corporate Services is required for all Post Judgement Options.

Refer to Section 11 for a description of each post judgement option.

5. SALE OF LAND

Where rates become overdue for five (5) years or more the General Manager is to be advised and his approval obtained prior to commencement of sale of land to collect unpaid rates.

Refer to Section 713 of the *Local Government Act 1993* for Council requirements when selling properties for unpaid rates.

6. PENSIONERS/HARDSHIP

In the circumstances where the debtor is a pensioner or a person suffering from drought induced financial hardship or other genuine hardship, the ability of the debtor to make full or part payments is to be carefully examined and any subsequent demands or arrangements only made without causing further financial hardship to the debtor concerned. At all times the information provided by debtors to enable an assessment of their overall financial position is to be treated as '**CONFIDENTIAL**'.

7. NON-RECOVERABLE DEBTS

Where the anticipated potential non-recoverable costs to Council, either internal, external or both, of collecting a debt is deemed by the Manager Financial Services to be substantial, or potentially substantial, the prior approval of the Director Corporate Services is to be obtained in relation to the most cost effective method of recovering the debt.

Recovery procedures are to be initiated for all amounts owing to Council, irrespective of the amount. However, for debts not exceeding \$500, where it is determined by the General Manager, either before or during the debt recovery process, that the cost of attempting to recover the debt exceeds the amount thereof, then that debt may be written-off.

8. LEGAL REQUIREMENTS

Legal action for recovery of outstanding debts is dealt with in both the *Local Government Act, 1993* and *Local Courts (Civil Claims) Act, 1970*. Regular review of these acts is essential in assuring the correct legal requirements are being undertaken.

9. DEBT COLLECTION AGENCIES

At the discretion of the Director Corporate Services, external debt collection agencies may be used for any or all of the above debt recovery processes, including the making and monitoring of satisfactory instalment payment arrangements by debtors, where there is no charge to Council by the external agency. In the majority of circumstances, this option will only relate to property debts.

For non-property related debts, the Director Corporate Services may engage debt collection agencies to undertake any or all of the above debt recovery processes, including the making and monitoring of satisfactory instalment payment arrangements by debtors, where there is minimal cost to Council and within budgetary constraints.

Current Debt Collection Agent

Outstanding Collections Pty Ltd
Suite C3
674 Old Prince Highway
SUTHERLAND NSW 2232
Ph. 02 95453115

Fax 02 95453251
Contact: Ron Peters.

10. DEBT COLLECTION – COUNCIL PROCEDURE

10.1 Recovery Process for Rates

Within fourteen (14) days after the overdue date, a reminder notice or statement of account is to be forwarded to the debtor.

Debts which remain outstanding twenty eight (28) days after the overdue date are to be issued a Letter of Demand requesting payment of the amount in full or for the debtor to contact Council Staff to make alternative arrangements. This letter is to indicate that failure to pay will result in legal action being initiated to recover the debt, together with any statutory interest and legal charges.

Should a response not be received from the ratepayer as a result of the letter of demand legal action is to be commenced:

- where applicable, on-going credit for the debtor is to be suspended; and
- a list of such debts is to be prepared and submitted to the Director Corporate Services for authorisation, for the issuing of a Statement of Liquidated Claim against the ratepayer.

10.2 Recovery Process for Water

Within fourteen (14) days after the overdue date, a reminder notice or statement of account is to be forwarded to the debtor.

Should a response not be received from the debtor as a result of the reminder notice, a Letter of Demand to be sent via a mail drop off, out to those that remain outstanding twenty-eight (28) days after the instalment date, requesting payment in full within two (2) days or water restrictions will apply imposing an eighty dollar (\$80.00) reconnection fee.

A list of water accounts remaining outstanding after thirty (30) days in excess of eighty (\$80) dollars is to be prepared and submitted to the Director Corporate Services for authorisation to commence water restrictions. Water Staff are utilised to restrict water meters. A letter is to be issued at the time of restriction indicating that restrictors will not be removed until the account is paid in full.

Ratepayers with accounts remaining unpaid fourteen (14) days after restriction will be issued with a Letter of Demand requesting payment of the amount in full or for the debtor to contact Council Staff to make alternative arrangements. This letter is to indicate that failure to pay will result in legal action being initiated to recover the debt, together with any statutory interest and legal charges.

A list of restricted water accounts remaining outstanding after forty two (42) days is to be prepared and submitted to the Director Corporate Services for authorisation, for the issuing of a Statement of Liquidated Claim against the ratepayer.

Where applicable, on-going credit for the debtor is to be suspended.

10.3 Recovery Process for Sundry Debtors

Any debt owed to Council outside of the rates and water is classified as a Sundry Debtor.

Council's Debtor's Clerk will issue reminder letters after each statement run for accounts outstanding between 60-90 days and these outstanding in excess of 90 days.

Debts which remain outstanding ninety (90) days after the overdue date are to be issued a Letter of Demand requesting payment of the amount in full or for the debtor to contact Council Staff. This letter is to indicate that failure to pay will result in legal action being initiated to recover the debt, together with any statutory interest and legal charges.

Where no personal contact is established with the debtor or where the debtor fails to enter into a satisfactory arrangement:

- where applicable, on-going credit for the debtor is to be suspended; and
- a list of such debts is to be prepared and submitted to the Director Corporate Services for authorisation, or otherwise, for the issuing of a Statement of Liquidated Claim against the debtor

10.4 Statement of Liquidated Claims (Summons)

For debt recovery purposes, a Statement of Liquidated Claims will be issued when:

- Rates and Annual Charges:- Two (2) instalments with a minimum amount of \$350.00 become outstanding.
- Water Charges:- Personal contact to be made for all accounts exceeding \$50.00 and water restrictions to be applied to debts exceeding \$80.00.
- Sundry Debtors:- All amounts outstanding after ninety (90) days with a minimum amount of \$250.00

When Council is preparing its own Statement of Liquidated Claim the follow should be noted:-

- Prepare the list of Statement of Liquidated Claims and the individual documents to be served on the address or place of abode of the debtors for lodgement at the Inverell Court House, paying the appropriate fee for service by the Sheriff or by post.
- The Court will serve the summons within a reasonable time (ie the Statement of Liquidated Claim). It can be typed on any colour paper and set up in word processing provided it complies with the format under the Act.
- A Company can be served a Statement of Liquidated Claim by post only on the registered office of the company. This requires a company search first. You may not serve a Statement of Liquidated Claim on the business address of the company.
- The cost of the service and summons is recoverable as part of the debt. Interest on the previous years' rates only to be claimed on the summons.
- The Statement of Liquidated claim (Default Summons) expires after nine (9) months from the date on which it is filed with the court. The court may extend this period.

10.5 Service of Default Summons (Statement of Liquidated Claim)

When Council has prepared its own Statement of Liquidated Claims, Council can arrange for the local Sherriff or any other Process Server to serve the summons. Summons must be severed within six (6) months from the date on which it is filed with the court.

Once the summons has been served, from the next day, the debtor has twenty eight (28) days in which to act, by either defending, paying, making an arrangement to Council or the Court.

The Court will notify Council when a debtor lodges a defence against the summons. The notification will give the grounds of the defence and the date for call over. The Director Corporate Services is to be immediately advised and his intentions sought.

Council will accept payment in full or suitable arrangements made with Council Staff. Council may request that Debtors wishing to make arrangements after the issue of a summons are advised to apply to the court for a Court Instalment Order, to pay of the debt by regular instalments. This process automatically gives council judgement against the debtor.

10.6 Service of Affidavit of Debt (Judgement)

A list of debts remaining outstanding twenty-eight (28) from the date of service of the summons is to be prepared and submitted to the Director Corporate Services for authorisation, for lodgement of Judgement with the Local Court.

An application for default judgement can be made following the expiration of the period of twenty eight (28) days after the service of the summons and within nine (9) months from the date on which the statement of Liquidated Claim was filed with the court.

Any payments made should be deducted from the Summons Amount and then application is made for Judgement.

Once judgement is obtained, it is enforceable for twelve (12) years.

Where the court rejects a statement filed for default judgment, the court must give notice of the rejection and the reasons therefore.

10.7 Post Judgement Options

Once Council has obtained Judgement against the Debtor it has several further options to recover the outstanding amount. These options include:-

- Writ of Execution
- Court Instalment Orders
- Examination Summons
- Garnishee
- Bankruptcy Notice

Post Judgement Options can be implemented the day after Judgement has been obtained. Authorisation from the General Manager or Director Corporate Services is required for all Post Judgement Options.

Refer to Section 11 for a description of each post judgement option.

11 DESCRIPTION OF POST JUDGEMENT OPTIONS

11.1 Writ of Execution

A Writ of Execution is to be made to the Local Court by completing the APPLICATION TO ISSUE EXECUTION form. It remains in force for twelve (12) months.

When the seizure of goods is made by the Sheriff in accordance with the Writ of Execution, the Director Corporate Services is to be advised immediately and his affirmation obtained in relation to the physical retrieval of the goods and then disposed at auction or otherwise.

The Sheriff cannot touch bedroom or kitchen goods and has no deadline under the six (6) months. The debtor to avoid the writ can make an arrangement to pay the Court to avoid selling of the goods. This is out of the Council's hands. The sale of goods will/may result in cash back to the Council to offset the debt.

The debtor may apply for an Instalment Order by declaring their assets and liabilities; income and expenditure to the clerk of the court and requesting payment be made to the Council via a nominal weekly or monthly amount. If Council feels that this amount is insufficient, Council can lodge an objection under Rule 38 of the Local Courts *Civil Claims Act, 1970* for the seizure to be recommenced by the Sheriff. Also refer to section on Instalment Orders (20).

11.2 Court Instalment Orders

Court Instalment Orders can be made at any time by the Court during the debt recovery process. The Court must accept the first approach provided it is not ludicrous. Where the debtor has defaulted and failed to pay an instalment in accordance with the order made, Council may enforce the balance of the judgment debt by issuing a garnishee order or a writ of execution.

The court will provide notice to Council about any instalment order accepted by the court. Council then has fourteen (14) days from the date of notice to lodge notice objecting to the making of an instalment order by the court. Upon receipt of the objection, the application is listed for hearing before the court, and notice as to time and place sent to all relevant parties.

11.3 Examination Order

An Examination Order enables the Council or the Court to examine the financial situation of the debtor. If the debtor is further than 30km from the local court house, eg in Broken Hill, then the Court can be requested to have the Registrar of the nearest court undertake the Examination Summons (see form attached). Note also the attached Form of Examination by Registrar or Council agent questions he/she will ask.

11.4 Garnishee

A Garnishee enables Councils to serve notice on a debtor's wages, Contractor Payments or Bank. The employer is entitled to retain 10% of the debt for administration costs. If the employer doesn't act, they can be held responsible for the debt. Once the application has been registered you forward it to the appropriate entity (ie, the employer if it is a wage/salary contract payment garnishee; the person's bank if it is a bank account garnishee). When the Garnishee runs out another garnishee can be issued for any remaining debt.

11.5 Bankruptcy Notice

A Bankruptcy Notice can be issued on any debt that exceeds \$2,000. This notice merely says that if payment is not forthcoming within twenty-one (21) days Bankruptcy Proceedings can be issued against you.

The threat of a Bankruptcy Notice results in a high percentage of debtors who receive a notice contacting Council to make payment or to make suitable arrangements for the payment of the account. The other advantage with this process is that the Bankruptcy Notice can be served by Process Servers rather than by the Sheriff. Therefore the lengthy delays with Examinations, Executions and Writs are substantially reduced.

Council will engage the services of an external Solicitor when implementing this strategy.

12. INTERSTATE MATTERS

For Interstate matters, the NSW law applies up to Judgement, however then rules of the other states must be followed from thereon to recover the debt, so one needs to check with the respective state authority first.



MANAGEMENT POLICY:	WRITE-OFFS – EXTRA CHARGES (PENSIONERS) - HARDSHIP
Ref:	

Contact Officer	Director Corporate & Economic Services, Corporate Services
Approval Date	26 September 2006
Approval Authority	Council
Reviewed	November 2009
Date of Next Review	September 2017

1 Policy statement

The Director Corporate & Economic Services (or person(s) authorised by the General Manager in writing) be authorised to write off extra charges on unpaid rates of eligible pensioners upon full settlement of the outstanding rates by the Pensioner, provided that this policy does not apply in cases where the settlement is by way of sale of the property, transfer of the property or from the pensioners estate.

MANAGEMENT POLICY:	WRITE-OFFS – RATES, CHARGES, DEBTS & HARDSHIP
Ref:	

Contact Officer	Director Corporate & Economic Services, Corporate Services
Approval Date	26 September 2006
Approval Authority	Council
Reviewed	December 1999, January 2001, November 2009, November 2016
Date of Next Review	September 2017

1 Policy statement

- a) That the General Manager be delegated authority to write off rates, charges and debts up to the value of \$1,000 in any one instance where an error has occurred, the rates, charges or debt is not recoverable at law or in the General Manager's opinion, it would not be economical to take proceedings for the recovery of such rates or debts;
- b) That the General Manager be delegated authority to either write-off or reduce interest accrued on rates or charges if a ratepayer has agreed to a satisfactory arrangement to pay off outstanding rates, and that the agreement is complied with;
- c) That rates, charges or debts exceeding the value of \$1,000.00 shall not be written off except by resolution of Council;
- d) That the Mayor be informed of the various requests considered by the General Manager and a report be presented to the Economic and Community Sustainability Committee detailing rates, charges or debts written off under this policy.