



Attachment L

Debt Recovery Policy

(Including Consideration for Hardship, Page 18)



GLEN INNES SEVERN COUNCIL

Debt Recovery Policy

RESOLUTION NUMBER: 8.09/10	MEETING: 23 September 2010
20.11/07	22 November 2007
Amendment to Policy: 5.08/07	23 August 2007
7.07/07	26 July 2007

PREAMBLE

AIMS

To establish appropriate links and references between relevant legislation (*expressed in provisions contained within enactments of parliament*) and Council's business rules (*expressed in the form of policies and procedures*) so as to articulate and facilitate a systematic approach to debt recovery management and administration, through the use of effective and efficient systems incorporating policies, procedures, standards, processes and guidelines.

This policy is intended to provide Council, Council staff and the payment defaulter reasonable guidance in regards to the procedures and processes related to the recovery of the debt owed to Council.

The further aim of this policy is to not duplicate by repeating the empowering provisions contained within the Local Government Act 1993, as amended and Local Government (General) Regulation 2005 or other relevant Acts or Regulations but rather, to supplement and clarify Council's decisions and actions where discretion is required or permitted, or where ambiguity of purpose or intent may exist. This policy should therefore be read in conjunction with the relevant legislation.

It should also be noted that this policy extends and applies to the non-monetary (e.g. *physical items of Council property*) as well as to the monetary (*i.e. money*) in relation to debt recovery.

CONSULTATION WITH ITS LEGAL REPRESENTATIVES, COUNCIL'S AUDITOR OR OTHERS

As required, Council shall consult with, legal representatives, Council's Auditor and others on matters pertaining to debt recovery, and act upon such professional advice where appropriate.

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Related Documents:			

DEALINGS WITH PAYMENT DEFAULTERS

Councillors, Council staff and Council agents shall at all times:

- Respect the rights of payment defaulters and not encroach upon those rights,
- Act “at arms length” in their dealing with payment defaulters by remaining impartial and objective, and;
- Ensure Council’s interests are represented.

A Councillor, Council staff member or an agent involved in debt recovery, who has a pecuniary or non-pecuniary interest in a specific debt recovery incident, must immediately declare that interest to the General Manager or Council and remove themselves from any further participation unless, after due consideration of all the facts, the General Manager or Council, authorises the Councillor, Council staff member or agent to continue to participate with or without certain conditions applying.

Councillors and Council staff shall at all times have due regard to Council’s Code of Conduct in their dealings with payment defaulters.

Council staff shall at all times have due regard to relevant Council policies and procedures related to customer service in their dealings with payment defaulters.

Whilst it is related principally to the Commonwealth and Council is afforded, in most cases, Crown immunity from the application of fair trading legislation within New South Wales, Councillors, Council staff and Council agents shall, where required or applicable, also have regard to the principles and practices as outlined in the joint Australian Competition & Consumer Commission (ACCC) and Australian Securities and Investments Commission (ASIC) Debt Collection Guideline: for Collectors and Creditors, October 2005 publication in its dealings with payment defaulters.

Extraction from the Debt Collection Guideline states that the “guideline explains how Commonwealth consumer protection laws relevant to collection apply”, “provides practical guidance on what collectors and creditors should and should not do to minimise the risk of breaching the laws administered by the ACCC and the ASIC”, and “ looks at the prohibitions and remedies against debt collectors who engage in the use of physical force, undue harassment or coercion, misleading or deceptive conduct and unconscionable conduct.”

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DEBT RECOVERY FRAMEWORK

1. DEFINITIONS

Agent

Is a representative (*person or business entity*) who acts on behalf of another person or business entity. Examples include, but are not limited to, legal advisors, debt recovery agencies and contractors.

An Approved Format

An official document with a presentation layout and content design defined by legislation, terms and conditions of a contract or other agreement or provisions of a service, or relevant industry guidelines, or other relevant Council policy, or the General Manager, which is in either hard copy or soft copy form. Examples include, written correspondence on Council letterhead, official notices, pre-printed or electronic forms designed for a specific purpose.

Arrangement Satisfactory to Council

An arrangement satisfactory to Council is one in which the payment defaulter and Council enter into an agreement in which a debt owed to Council is paid or compensated for within a reasonable time. A key component is that there must be a genuine commitment by the defaulter to extinguish the debt in accordance with the agreement. The agreement must be in writing, and in an approved format.

Business Entity

For the purposes of this policy, a business entity shall include, but not be limited to, sole traders, partnerships, corporations, companies, public authorities, government departments and other organisations or bodies that may or may not be classified under legislation as a business.

Client

A person or business entity using the services of a professional person or business entity.

Credit

The ability to obtain goods or services before payment.

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Crown Immunity

The doctrine of Crown immunity (*traditionally referred to as the Shield of the Crown*) provides that the Crown is not bound by the effect of any legislation unless the legislation expressly states that it is bound, or a clear inference can be drawn from the legislation that it is meant to be bound. The actions of Commonwealth, State and Territory governments and their authorities can therefore be protected from the operation of the law by this doctrine.

Local Government Councils are government authorities.

Customer

A person or business entity, that buys goods and/or services, from another person or business entity.

Debt Recovery Procedure

A debt recovery procedure is a set of specific steps, instructions, standards, guidelines or details on who, what, where, when, and how a specific aspect or component of debt recovery is to be, or should be, dealt with by Council staff or Council's agents and usually appears in written form. It is therefore an internal working document that translates the debt recovery policy provisions into sets of actions that must or need to be performed to enact, comply with, and support a debt recovery policy.

Estimated Cost

Estimated Cost may include an estimate of actual costs, plus on-costs, plus overheads, plus profit margin, plus Goods & Services Tax (GST), if applicable.

Evidence or Proof(s)

Official independent third party documents that can withstand the test of scrutiny. Examples include, but are not limited to, original or certified copies of documents (such as wills, statutory declarations, third party source documentation, and medical certificates).

Ex-Gratia Payment

A voluntary payment of rates and/or charges by a person or business entity exempt by legislation from payment of those rates and/or charges.

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Funded Service

Includes, but is not limited to, services funded by Federal or State Governments, or via an approved partnership agreement between government and private enterprise. Examples include, but are not limited to, the provision of child care, aged care or other community programmes.

General Manager

Refers to the General Manager, the Acting General Manager or a member of staff who has been delegated the responsibility for Council's debt recovery management and administration by a written order of the General Manager or a resolution of Council.

Hard Copy

Information printed upon paper.

Items of Council Property

Includes, but is not limited to, items that possess some physical/tangible attribute and are owned or controlled by Council. Examples include, but are not limited to, minor tools and equipment, major plant and equipment, fixed assets (such as land and buildings), other items considered to be of reasonable value.

Non-Monetary

Includes, but is not limited to, items of Council property.

Other Approved Delivery Method

Methods as defined under the Local Government Act 1993, as amended, Section 710 - Service of Notices on Persons, or other relevant provisions and legislation.

Payment Default

A payment default occurs when an amount becomes due and payable and is not paid. The person(s) or business entity, which made the default, is deemed to be a payment defaulter.

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For all other uses, reasonable time shall be defined by application of the reasonable person test.

Relevant Legislation

Includes, but is not limited to, the Local Government Act 1993, as amended, and the Local Government (General) Regulation 2005.

Soft Copy

Information not printed upon paper and stored in an electronic file format. Examples include, text file (TXT), Microsoft word document (DOC), portable document format (PDF).

Special Circumstances

Special Circumstances in this policy refers to, but is not limited, to situations where:

- Provisions of legislation applies,
- Terms and conditions related to contracts, other agreements, or provisions of a service applies,
- Instruments of the Court such as an instalment order which pre-determines payment amounts and schedules applies, and;
- A threshold as defined within this policy applies.

Sufficient Notice

Legislation, the terms and conditions of contract or other agreements or provisions of a service, or the procedural practices and processes, or best practice guidelines of a relevant industry, shall determine sufficient notice.

Where no such relevant determination exists, sufficient notice shall be determined by this policy to be three (3) working days notice exclusive of the delivery period of the notice.

User

Includes, but is not limited to, a person or business entity generally termed as a customer or client of a service.

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2. EX-GRATIA PAYMENTS

Relevant Legislation

The relevant legislation pertaining to exemptions is set out principally but not necessarily exclusively under the Local Government Act 1993, as amended;

- Section 555 - What land is exempt from all rates,
- Section 556 - What land is exempt from all rates, other than Water Supply Special Rates and Sewerage Special Rates,
- Section 557 - What land is exempt from Water Supply Special Rates and Sewerage Special Rates,
- Section 558 - What land and bodies may be exempt from Water Supply Special Rates and Sewerage Special Rates, and;
- Section 559 - Determination as to whether a body is a Public Benevolent Institution or Public Charity.

Policy Item

Council shall not pursue debt recovery of ex- gratia payments. Instead, a courtesy letter, in an approved format, shall be issued advising that Council has not received an ex-gratia payment and requesting instructions or intentions in regards to the ex-gratia payment.

Interest shall not accrue on ex-gratia payments.

Should an ex-gratia payment no longer be applicable, Council shall write back the rates and/or charges raised against its accounting records.

3. DUE DATE OF PAYMENT

Monies owed to Council become due and payable in accordance with:

- Legislative requirements, or;
- The terms and conditions of a contract, or other agreement or provisions of a service or;
- Official notifications, or;
- Industry best practice guidelines, or;
- The expiry of thirty (30) days from the date of issue of a Tax Invoice/Invoice, or;
- Other such periods as determined by a resolution of Council or a written order, or other official notification, of the General Manager.

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4. MONIES OUTSTANDING TO COUNCIL

On the expiry of the due date, monies unpaid become monies outstanding to Council.

All monies outstanding to Council, including accrued interest, out-of-pocket expenses, court-awarded costs (*hereafter referred to as the "debt"*) shall be paid in full (where practicable) within the current financial year (*i.e. 1 July to 30 June*) in which the debt(s) have been incurred.

However, special circumstances may apply whereby an arrangement, satisfactory to Council, shall be entered into, with the payment defaulter(s).

A payment defaulter having a history of more than two (2) incidents of payment default shall be deemed to be a person or business entity not exhibiting a genuine commitment to extinguish the debt. In such cases, Council reserves the right to proceed immediately to legal action or pursue other actions to recover the debt.

5. RESPONSIBILITY OF CUSTODIANS OF ITEMS OF COUNCIL PROPERTY

A person or business entity, which has an item of Council property in their custody or possession, is responsible for the safe keeping and protection of the item of Council property and for ensuring that the item of Council property remains in good order and is only used for an approved or agreed purpose.

Failure to do so, except in cases considered by Council to be beyond the reasonable control of the person or business entity, shall render the person or business entity liable for the cost of repair or replacement of the item of Council property.

Council reserves the right to deny custodianship or possession of any item of Council property to a person or business entity.

Council reserves the right to require a non-refundable amount of a reasonable value, as determined by the General Manager or Council, to be pre-paid prior to a custodianship or possession event occurring.

6. SUSPENSION OF DEBT RECOVERY DUE TO AMOUNT NOT BEING COST EFFECTIVE TO PURSUE

Policy Item

The General Manager shall on or before 30 June each year, or as required, determine an amount, to be referred to as the "threshold amount to pursue debt", that establishes a threshold below which the General Manager believes on reasonable grounds that it would not be cost effective to pursue those amounts through debt recovery. Debt recovery for amounts below the "threshold amount to pursue debt" shall be suspended.

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The “threshold amount to pursue debt” shall apply to the whole of a specific debt and not to any part of a specific debt.

The “threshold amount to pursue debt” must be an amount which is below the amount fixed for rates and charges above which any individual rate or charge may be written-off only by a resolution of Council as defined within the Local Government (General) Regulation 2005,

Section 131 - Procedure for writing off rates and charges.

Suspension of the pursuit of debt recovery shall continue until:

- The amounts below the “threshold amount to pursue debt” is paid (*including any accruing interest*), or;
- It later forms part of a debt that is cost effective to pursue through debt recovery, or;
- It is written-off by either a written order of the General Manager or by a resolution of Council.

Where the General Manager does not determine a “threshold amount to pursue debt”, or is unable to do so, the debt shall be pursued through debt recovery.

7. MAXIMUM INTEREST RATE ON OVERDUE RATES AND CHARGES

Relevant Legislation

The relevant legislation pertaining to the setting of interest rates is in accordance with a Ministerial Order in accordance with the Local Government Act 1993, as amended:

- Section 566 - Accrual of Interest on Overdue Rates and Charges.

Policy Item

Council may/shall apply the maximum interest rate on overdue rates and charges as determined annually by the Minister for Local Government under the Local Government Act 1993, as amended, - Section 566 (3).

8. STANDARD DEBT RECOVERY PROCESS

Debt recovery shall commence on the first working day after the expiry of the due date of payment with the following official notifications being issued.

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8.1 FIRST STAGE - REMINDER NOTIFICATION

The intentions of the first stage is to:

- Bring to the attention of the payment defaulter that a debt exists, and;
- Provide the payment defaulter with an opportunity to resolve the debt and avoid incurring legal costs or other actions to ensure there is a resolution to the debt and the costs associated with debt recovery.

Policy Item

A payment defaulter shall be issued with a reminder notice or other approved document for the purpose, by post or other approved delivery method, to the last known address of the payment defaulter, giving fourteen (14) days notice either to pay in full or to enter into an arrangement satisfactory to Council.

8.2 SECOND STAGE - FINAL NOTIFICATION

The intention of the second stage is to afford the payment defaulter a final opportunity to ensure the debt outstanding is paid in full.

Policy Item

In the case where there is a failure to comply with the reminder notice, a final notice or other approved document for the purpose, accompanied with or without other documents shall be issued, by post or other approved delivery method, to the last known address of the payment defaulter, giving a further seven (7) days notice either to pay in full or to enter into an arrangement satisfactory to Council.

A final notice or other approved document for the purpose shall constitute a final letter of demand.

8.3 THIRD STAGE - LEGAL ACTION AND OTHER ACTIONS TO ENSURE A RESOLUTION OF THE DEBT

The intention of the third stage is to formalise a final resolution of payment of the debt should the first and/or second stages be unsuccessful in achieving the appropriate outcome.

Policy Item

In the case where failure to comply with the final notice has occurred, legal action or other actions shall commence, to ensure there is a resolution of the debt.

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Related Documents:			

9. COSTS ASSOCIATED IN THE RECOVERY OF DEBT

Relevant Legislation

The processes and procedures related to costs associated with the recovery of debt are set out principally but not necessarily exclusively under the Local Government Act 1993, as amended:

- Section 505 - Charge of rates and charges on land,
- Section 605 - Expenses of tracing persons, and;
- Section 695 - Suing for debts.

Policy Item

The payment defaulter shall be liable for all costs associated in the recovery of the debt to Council to the extent that it can be lawfully applied.

10. FORMAT OF A REMINDER AND FINAL NOTICE OR OTHER APPROVED DOCUMENT FOR THE PURPOSE

Reminder and final notices, or other documents approved for the purpose, shall be in an approved format and contain the details of the payment defaulter, the nature and the amount of debt owed to Council, the due date of response to the notice or other documents approved for the purpose, and any other relevant information.

11. MAKING OF AN ARRANGEMENT SATISFACTORY TO COUNCIL

Relevant Legislation

The relevant legislation pertaining to the ability of Council to enter into an arrangement satisfactory to Council is set out principally but not necessarily exclusively under the Local Government Act 1993, as amended:

- Section 564 - Agreement as to periodic payment of rates and charges.

Council is also permitted to enter into other arrangements in lieu of payment of rates and charges. These are set out principally but not necessarily exclusively under Local Government Act 1993, as amended:

- Section 565 - Capital contribution instead of payment of special rates or charges, and;
- Section 570 - Transfer of land in payment of rates or charges.

and under the Local Government (General) Regulation 2005:

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- Section 129 - Request for transfer of land in payment of rates, charges or accrued interest.

Policy Item

The General Manager shall be authorised to enter into an arrangement only after making the necessary enquiry to satisfy him/her self to the relevant particulars and merits of the specific case.

The arrangement must be in writing, in an approved format, detailing the particulars including the payment defaulters responsibilities and consequences should the arrangement be defaulted upon. A copy of the arrangement shall be retained in an appropriate location within Council's corporate records.

In lieu of an expressed written arrangement signed by both parties, Council may issue a letter, in an approved format, confirming the details of an arrangement satisfactory to Council and any other relevant details.

Legal action or other actions to ensure there is a resolution of the debt, shall be suspended for the period of the arrangement on the condition that the arrangement is not defaulted upon or subsequently cancelled by Council for any reason. Notice of cancellation of an arrangement shall be in writing, in an approved format, and state the reason(s) for the cancellation.

Under no circumstances shall a payment arrangement exist for a period exceeding two (2) years be entered into without a resolution of Council.

With Reference to a Capital Contribution:

The General Manager shall consider the proposal on its merits and prepare a report to Council with an appropriate recommendation.

With Reference to Transfer of Land:

Before accepting the transfer of land in satisfaction for the payment of rates, charges and accrued interest in accordance with the Local Government Act 1993, as amended:

- Section 570 - Transfer of land in payment of rates or charges;

and the Local Government (General) Regulation 2005:

- Section 129 - Request for transfer of land in payment of rates, charges or accrued interest.

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Council shall satisfy itself that:

- The payment defaulter has exhausted all reasonable options to pay rates, charges and any accrued interest and that personal hardship would result if the transfer did not occur or;
- Council has formed the opinion that it has no viable option other than to accept the transfer of land in satisfaction of the payment of rates, charges and accrued interest.

Council shall not, unless circumstances dictate otherwise, accept the transfer of land in satisfaction of the payment of rates, charges and accrued interest for which it has no useful purpose or where, in the opinion of Council, that any condition or liability attached to the land or its use or development would be detrimental to Council and the community's interests or would result in an obligation being placed upon Council to commit unreasonable amounts of its resources on a one-off or on-going basis.

All land accepted as a transfer in satisfaction of the payment of rates, charges and accrued interest shall be classified as operational land except where otherwise required by legislation to be classified as community land.

With Respect to the Transfer of Goods, Services, In-Kind or Barter in-Lieu of Payment:

Council shall not accept the transfer of goods, services, in-kind or barter in-lieu of payment of debt except where expressly provided for within legislation.

12. OTHER SPECIFIC RESPONSIBILITIES OF PAYMENT DEFAULTERS WITH PAYMENT ARRANGEMENTS

Includes, but is not limited to:

- Maintaining regular contact with Council and advising of any applicable changes in the payment defaulter's circumstances (*e.g. changed financial circumstances, potential events of payment default*) or any other matter relevant or would reasonably be deemed relevant.

13. PAYMENT ARRANGEMENT DEFAULT

Should a payment arrangement be defaulted upon, without an acceptable reason being provided by the payment defaulter to Council within a reasonable time, Council shall immediately commence legal action or pursue other actions to ensure there is a resolution of the debt.

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14. REPEATED PAYMENT ARRANGEMENT DEFAULT

A payment defaulter having a history of more than two (2) incidents of payment default shall be deemed to be a person or business entity not exhibiting a genuine commitment to extinguish the debt. In such cases, Council reserves the right to proceed immediately to legal action or other actions to ensure there is a resolution of the debt.

15. LEGAL ACTION

Relevant Legislation

Council's power to pursue recovery of rates and charges is set out principally but not necessarily exclusively under the Local Government Act 1993, as amended:

- Part 2, Division 1, Section 695 - Suing for debts, and;
- Part 2, Division 4 - Legal proceedings for the recovery of rates and charges.

Policy Item

Should any debt owed to Council not be paid in full or an arrangement satisfactory to Council have not been entered into by the payment defaulter by the due date of a final notice or other approved document for the purpose Council shall either:

- Commence action to pursue debt recovery through the available legal options at its disposal having regard to the procedures and processes pertaining to the relevant court(s) of jurisdiction, or;
- Commence other actions to ensure there is a resolution of the debt.

16. OTHER ACTIONS TO ENSURE THERE IS A RESOLUTION OF THE DEBT

16.1 ISSUING OF A NOTICE UPON THE OCCUPIER

Relevant Legislation

The provisions with respect to having rent in respect of the land paid by the occupier to Council as it falls due in satisfaction of the rate, charge or judgment are set under the Local Government Act 1993, as amended:

- Section 569 - Liability of the occupier.

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Related Documents:			

Policy Item

Where the conditions as set out in Section 569 apply, Council shall issue a notice, in an approved format, upon the occupier to have their rent paid to Council in satisfaction of the rate, charge or judgment related to the owner's debt.

16.2 FIXING OF THE AMOUNT OF RATES AND CHARGES ABOVE WHICH ANY INDIVIDUAL RATE OR CHARGE MAY BE WRITTEN-OFF ONLY BY RESOLUTION OF COUNCIL

Relevant Legislation

The procedures for the writing off of rates, charges and accrued interest are set out principally but not necessarily exclusively under the Local Government Act 1993, as amended:

- Section 567 - Writing off of accrued interest,
- Section 583 - Writing off of pensioners rates and charges,
- Section 584 - Ending of concessions, and;
- Section 607 - Writing Off of rates, charges and accrued interest.

and the Local Government (General) Regulation 2005:

- Section 130 - Additional circumstances in which rates or charges may be written-off (Section 607),
- Section 131 - Procedures for writing off rates and charges, and;
- Section 132 - Details of written-off rates and charges to be included in annual report.

Policy Item

The General Manager is authorised to issue written orders of the General Manager to write off rates and charges of **\$500 or less** (*or other amounts as determined by a separate resolution of Council from time-to-time*) in accordance with the Local Government (General) Regulation 2005:

- Section 131 - Procedures for writing-off rates and charges.

The General Manager shall furnish to Council a list of proposed rates, charges and accrued interest, as required, to be written-off by Council in accordance with the Local Government Act 1993, as amended:

- Sections 567 - Writing off of accrued interest;
- Section 607 - Writing off of rates, charges and accrued interest;

and with the Local Government (General) Regulation 2005:

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- Section 130 - Additional circumstances in which rates or charges may be written-off (Section 607);
- Section 131 - Procedures for writing off rates and charges.

16.3 FIXING OF AN AMOUNT ABOVE WHICH DEBTS (OTHER THAN RATES OR OTHER CHARGES) TO COUNCIL MAY BE WRITTEN-OFF ONLY BY A RESOLUTION OF COUNCIL

Relevant Legislation

The procedures for the writing-off of debts (*other than rates and other charges*) are set out principally, but not necessarily exclusively under the Local Government (General) Regulation 2005:

- Section 213 - Restrictions on writing off debts to a Council.

Policy Item

The General Manager is authorised to issue written orders to write-off debts (*other than rates and other charges*) of **\$500 or less** (*or other amounts as determined by a separate resolution of Council from time-to-time*) in accordance with the Local Government (General) Regulation 2005:

- Section 213 - Restrictions on writing off debts to a Council.

The General Manager shall furnish to Council a list of proposed debts (*other than rates and other charges*), as required, to be written-off by Council and in accordance with the Local Government (General) Regulation 2005:

- Section 213 - Restrictions on writing off debts to a Council.

16.4 CONSIDERATION FOR WRITING OFF ACCRUED INTEREST DUE TO PERSONAL HARDSHIP OR FOR REASONS BEYOND A PERSON'S CONTROL

Relevant Legislation

The provisions with respect to writing off accrued interest due to personal hardship or for reasons beyond a person's control are in accordance of the Local Government Act 1993, as amended:

- Section 567 - Writing off of accrued interest.

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Policy Item

All applications for personal hardship or for reasons beyond a person's control shall be made in writing, detailing the payment defaulter's particular circumstances for claiming personal hardship, or the reasons beyond a payment defaulter's control.

The Council or the General Manager shall consider all applications on their merits and use the following guidelines in making a determination.

There are three (3) circumstances in which consideration shall be given:

- In the case of illness or injury causing loss of normal income, which renders, or rendered the payment defaulter, unable to meet the payments, and, is evidenced by a medical certificate and proof of loss of normal income.,
- In the case of a natural disaster (*bush fire, flooding, drought, etc*) causing, loss of normal income which renders, or rendered the payment defaulter, unable to meet the payments for a specified period.
- If, in the opinion of Council or General Manager, the payment defaulter would experience personal hardship or be placed in a position beyond their reasonable control if the consideration were not granted.

16.5 SALE OF LAND FOR UNPAID RATES AND CHARGES**Relevant Legislation**

The procedures for the sale of land for unpaid rates and charges are set out principally but not necessarily exclusively under the Local Government Act 1993, as amended:

- Division 5 - Sale of Land for Unpaid Rates and Charges, Sections 713 to 726 inclusive;
- and the Local Government (General) Regulations 2005:
- Section 133 - Sale of Land to Recover Overdue Rates and Charges.

Policy Item

With respect to Local Government (General) Regulations 2005 - Section 133 (g):

The only "arrangement satisfactory to Council" shall be payment in full unless the payment defaulter:

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- Is a beneficiary of an estate held in the deceased payment defaulter's name and can show evidence or other proof(s) before the time fixed for the sale that it was not reasonable for him/her to be aware of, or made aware of, by other beneficiaries or interested persons, of the debt.
- Has suffered incapacity due to illness or injury rendering the payment defaulter unable to deal with their affairs, or which made it impracticable for him/her/them, or others, to do so and can furnish medical or other relevant evidence or proof(s) to that effect before the time fixed for the sale.
- Is the Crown. (*The Local Government Act 1993, as amended, Section 714 - Estates and Interest of the Crown in Land, stipulates that the estates and interests of the Crown in land cannot be offered for sale.*)

The necessary evidence or proof(s) to suspend proceedings for sale of land by the time fixed for the sale must be received by the General Manager in a reasonable time in order to allow the General Manager the ability to perform the necessary examinations of the submitted evidence or proof(s).

Should the General Manager not receive the necessary evidence or proof(s) within a reasonable time, or is unable to readily examine the evidence or proofs by the time fixed for the sale, or determines that the evidence or proof(s) is deficient in some way, Council shall proceed with the sale.

16.6 WATER SUPPLIES

Relevant Legislation

The cutting off or restricting of water supply for unpaid rates or charges with respect to water supply is set out principally but not necessarily exclusively under the Local Government (General) Regulations 2005:

- Section 144 - Cutting-off or restricting water supply.

Policy Item

Restriction of Water Supply

A final notice or other approved document for the purpose with respect to water consumption shall include a "*Notice of Intent to Restrict Water Supply*" within seven (7) days if payment is not made in full or an arrangement satisfactory to Council entered into.

Upon expiry of the seven (7) days, if neither payment in full is made, or an arrangement satisfactory to Council having been entered into, Council shall restrict the water supply.

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Related Documents:			

A Water Meter Restrictor Fee, shall be issued to the defaulting owner of the property, and is in accordance, with Council's current Schedule of Fees and Charges.

The water meter restrictor fee, together with the water consumption debt, must be paid in full or, an arrangement satisfactory to Council having been entered into, prior to the removal of the water meter restrictor.

16.7 PRIVATE WORKS

Relevant Legislation

The processes and procedures related to private works are set out principally but not necessarily exclusively under the Local Government Act 1993, as amended:

- Section 67 - Private works.

Policy Item

Private works, not exceeding \$10,000, must be paid in full prior to the work being performed by Council and its staff.

Private works exceeding \$10,000 may be paid in advance, or the customer must provide Council with a bank guarantee with the account to be settled within thirty (30) days of completion of the works.

Private Works exceeding \$250,000 shall be referred to Council by way of a report in order for Council to consider the payment method on merit.

Council reserves the right not to proceed, or to suspend other private works in which Council has been engaged by a payment defaulter until such time as payment of any Council debt has been made or an arrangement satisfactory to Council has been entered into.

16.8 GENERAL DEBTORS

Relevant Legislation

The procedures and processes related to the setting of approved fees for goods and services are set out principally but not necessarily exclusively under the Local Government Act 1993, as amended:

- Part 10 - Fees.

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Related Documents:			

Policy Item

Council shall require a person or business entity to pay for goods or services prior to receiving the goods or service where a person or business entity has overdue amounts owing to Council or has exhibited a repeated default history or has had a previous debt written-off by the General Manager, or by a resolution of Council.

16.9 OTHER DEBT ARISING FROM STATUTE**Relevant Legislation**

The processes and procedures related to other debts arising from statute are set out principally but not necessarily exclusively under the Local Government Act 1993, as amended:

- Section 141 - Council's response to submission of particulars of work by owners,
- Section 354A - Ministerial approval for certain termination payments to senior staff, and;
- Section 438 - Recovery of amount surcharged.

Policy Item

Costs or monies pertaining to other provisions of the Local Government Act 1993, as amended, and Local Government (General) Regulation 2005 or other relevant Acts or Regulations, which become debts or subject to recovery under those provisions, shall be pursued in accordance with:

- Legislation, or
- The terms and conditions of a contract or other agreement or provisions of a service, or
- Other relevant policy, or
- This policy.

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16.10 FUNDED SERVICE

Where Council provides a service on behalf of, or jointly with, a funding body, the users of such service shall be subject to a cancellation fee where insufficient notice of cancellation by the user is not provided, except where otherwise excluded legislation, the terms and conditions of a contract or other agreement or provisions of a service.

The cancellation fee shall be raised as a debt to the user.

The amount of the cancellation fee shall be determined by:

- Legislation or;
- The terms and conditions of a contract or other agreement or provisions of a service or;
- Council.

The payment in full or the entering into an arrangement satisfactory to Council to pay the debt shall be a mandatory pre-requisite for a service being provided to a user.

Council shall pursue debt recovery in accordance with the relevant legislation, the terms and conditions of a contract or other agreement or the provisions of a service, or this policy where applicable.

Where a user has a cancellation history of more than two (2) incidents without an acceptable reason being provided by the user to Council, the cancellation fee shall be required to be paid at the time of requesting the service and be a pre-condition for a service being provided to a user.

Where a user has a cancellation history of more than two (2) incidents without an acceptable reason being provided by the user to Council, Council reserves the right not to provide the service to the user.

16.11 RESIDENTIAL TENANCY

Relevant Legislation

In New South Wales, the main pieces of legislation that outline the rights and responsibilities of those in the public and private residential tenancy market are the:

- Residential Tenancies Act 1987;
- Landlord and Tenant (Rental Bonds) Act 1977;
- Residential Parks Act 1998, and;
- Consumer, Trader and Tenancy Tribunal Act 2001; <http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0>

and more broadly:

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- the Law of Contract.

Policy Item

Where a tenant has defaulted upon the payment of rent, or the payment of reimbursement for damages or repairs or loss of an item of Council property, or a financial penalty for a breach of contract or agreement, Council shall pursue debt recovery in accordance with the relevant legislation, or the terms and conditions of a contract or other agreement, or the provisions of this policy where applicable.

16.12 COMMERCIAL LEASING**Relevant Legislation**

In New South Wales, the main pieces of legislation that outline the rights and responsibilities of those in the commercial leasing market are the:

- Retail Leases Act 1994;

and more broadly:

- the Law of Contract.

Policy Item

Where a lessee has defaulted upon the payment of lease fees, or the payment of reimbursement for damages or repairs or loss of an item of Council property, or a financial penalty for a breach of contract or agreement, Council shall pursue debt recovery in accordance with the relevant legislation, or the terms and conditions of a contract or other agreement, or the provisions of this policy where applicable.

16.13 WITHHOLDING PAYMENTS FOR GOODS AND SERVICES PURCHASED FROM PAYMENT DEFAULTER

Council reserves the right to withhold payment, or a part thereof equivalent to the total amount of the debt, for goods or services that it has purchased from a payment defaulter until such time as Council receives:

- Payment in full or;
- An arrangement satisfactory to Council has been entered into or;
- Council receives a written instruction or agreement from the payment defaulter to apply that payment to extinguish the debt to Council or;
- Other lawful instructions.

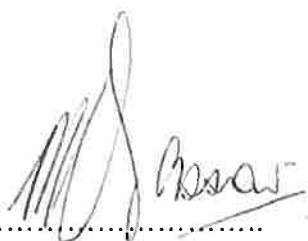
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16.14 EMPLOYEES OF COUNCIL

Where Council is unable at law to pursue debt recovery related to an employee, the General Manager shall suspend any further credit to the employee until the employee has resolved the debt.

In cases where Council has written off a debt related to an employee, no further credit shall be extended to that employee.

In cases where damage, repair or loss of an item of Council property is involved with an employee, the General Manager shall pursue counselling, disciplinary procedures, suspension from duty, or dismissal actions where the circumstances satisfy the criteria for such actions.



General Manager

29-9-2010
Date

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Related Documents:			