

Debt Recovery Policy

Policy Details

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Supporting documentation

Legislation	<ul style="list-style-type: none"> • <i>Local Government Act 2009</i> • <i>Local Government Regulation 2012</i>
Policies	<ul style="list-style-type: none"> • Revenue Statement • Revenue Policy • Financial Hardship Policy
Delegations	<ul style="list-style-type: none"> • Nil
Forms	<ul style="list-style-type: none"> • Application to Pay by Arrangement Form
Supporting Documents	<ul style="list-style-type: none"> • Corporate Plan 2021-2025

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Intent

To guide the administration process to be used in the collection of overdue rates, charges and debts.

When pursuing the collection of overdue rates or charges Council will have due concern for any financial hardship faced by ratepayers and will allow appropriate time to pay overdue rates where financial difficulty is identified.

Scope

This policy applies to outstanding rates and charges, sundry debtor accounts and other monies, due to Council.

Policy Statement

Safeguarding Council's and Community's Interests

The Chief Executive Officer or delegate may direct that recovery action for any debt be conducted in a way that differs from the processes set out in this Policy when that is considered to be in the Council's or the community's interest.

Nothing in this policy binds the Council to precisely follow any process set out in this policy, and a failure to follow any process does not change or relieve a debtor's obligation to pay a debt when due.

Principles

The Policy is guided by the following principles:

- Debt Recovery – Council aims to ensure effective control over debts owed to Council, including overdue rates, charges and interest and to establish debt management procedures for the efficient collection of receivables and the recovery of outstanding debts, including deferment and alternative payment arrangements.
- Transparency – by making clear the obligations of ratepayers and other debtors, and the processes used by Council in assisting them to meet their financial obligations.
- Simplicity – making the processes used to recover overdue rates, charges and other debts clear, simple to administer and cost effective.
- Capacity to pay – in determining appropriate arrangements for ratepayers.
- Equity – by treating all ratepayers in similar circumstances in the same way.

Rates and Charges

Initial Recovery Action

Where rates and/or charges become overdue, Council will take the following recovery action:

- Fourteen to twenty-eight (14 to 28) days after the due date of the rates and charges, property owners will be issued with a Final Reminder Notice with fourteen (14) days to respond.

- Should the ratepayer not make full payment or obtain Council approval for an acceptable alternative and the overdue amount is in excess of \$500, the property may be referred to Council's debt collection agency with no further notice to the ratepayer.

Where overdue rates and/or charges have been referred to Council's debt collection agency, an initial letter of demand will be issued, direct contact attempted to be undertaken, and other debt collection activities taken in order to secure payment of the debt. At this stage it will still be possible for ratepayers to enter into a payment arrangement which may be approved on a case-by-case basis at Council's sole discretion.

Once the files are sent to Council's collection agency, all contact and payment arrangements made are to be dealt with by Council's collection agency.

Indicative Collection Timeline (for Guidance only)

Pre-Legal Process

Day 0	Issue of Rate Notice – Debt becomes payable
Day 30	End of discount period – Debt becomes due
Day 31	Debt becomes overdue
Day 45	Issue of Reminder Notice by Council
Day 59	Reminder period closes
Day 66	Account referred to Debt Collection Agency
Day 70	Issue of Demand Letter by Debt Collection Agency
Day 78	Account referred to collection Solicitors Debt Collection Agency to phone Debtor (if phone number recorded)
Day 82	Issue of Final Demand Letter by collection solicitors
Day 90	Account referred to Council for claim authorisation
Day 94	Claim authorisation confirmed by delegated Council officer

Legal Proceedings

Day 95	Lodgement of Magistrates Court Claim
Day 96	Service of claim documents by bailiff
Day 124	End of timeframe for debtor to pay debt or defend claim
Day 125	Debtor becomes liable to have judgment entered against them

Payment Arrangements

In accordance with section 125 of the Regulation, Council may allow landowners who are unable to pay their rates by the due date to enter into a payment arrangement to make periodic payments in arrears.

Depending on the ratepayers circumstances, the general rule for a payment arrangement is the ratepayer must be able to maintain the current rates plus arrears on overdue rates, which will include interest charged on rate outstanding rates.

In other words, to be approved, a payment arrangement must allow for the full balance overdue to be paid within the approved payment arrangement period, either by weekly / fortnightly / monthly remittances. Exceptions or extensions may be approved at the discretion of Director of Corporate Services.

Where a payment arrangement meets the criteria set by Council and is approved, written acceptance will be provided to the ratepayer(s).

Payment arrangements will be reviewed on a regular basis to confirm compliance. Failure to meet the agreed payments or any amended amount may result in the cancellation of the payment arrangement and referral to the debt collection agency for commencement of recovery action.

A payment arrangement may be reinstated when the arrears are brought up to date within seven (7) days. A payment arrangement may be renegotiated where the ratepayer(s) have demonstrated substantial compliance with the original plan.

Financial Hardship

Ratepayers may apply for rate relief based on hardship supported by relevant documentation as outlined in the Financial Hardship Policy.

Legal Action

Legal action is seen as a last resort to enforce debt collection. However, such action will be taken following previously mentioned initial recovery processes. All recoverable costs, as part of all debt recovery processes, will be passed on to the ratepayer.

Where the probability of successful recovery of an outstanding debt is low, particularly in relation to debts where past legal action has not resulted in repayment of the outstanding debts, Council may elect not to proceed with further legal action and consider alternate collection action and strategies.

Claim and Statement of Claim

If no returned mail is received by Council or its debt collection agents, it will be assumed that the correspondence has been received. Legal action will be commenced if the account remains unpaid or an approved payment schedule is not made with the collection agency.

Ratepayers with an individual or combined balance over \$1,000 will be subject to the issue of a Claim and Statement of Claim in the appropriate court. At this stage, the debtor will incur legal costs that are recoverable with the debt.

Judgment

Prior to seeking judgment of an overdue amount, a letter will be sent to the debtor advising that this may be the next step and of the potential impact on their credit history. Where a telephone number is recorded, the Debt Recovery Agency MUST attempt to contact the debtor by telephone.

For debts where substantial payment has been received and / or where the balance remaining outstanding is the legal fees only, an attempt will be made by our debt collection agents to contact the debtor by telephone.

If, within twenty-eight (28) clear days after service of claim, the ratepayer has not paid the debt and costs, the Chief Executive Officer may approve judgment to be obtained for the debt.

Once filed with the court and approved, judgment may affect the debtor's credit history file for a period of five (5) years.

Further Collection Action that may be Considered

Council may initiate other collection action in order to recover outstanding debts such as:

- Oral examination to determine income/assets
- Bankruptcy if the judgment obtained is over \$5,000
- Sale of land in accordance with the Regulation

- Full wind up on companies issued with Statutory Demand
- Any other process as recommended by the debt collection agency to successfully recover the debt

Direct Statutory Demand and Wind Up Action

At the discretion of the Chief Executive Officer or other delegated officer, companies with a combined overdue balance of more than \$10,000 may be subject to the issue of a Statutory Demand, without proceeding to claim and judgment, in the appropriate court.

If, within twenty-one (21) clear days after service of the Statutory Demand, the ratepayer has not paid the debt and costs, the Chief Executive Officer may approve wind up action to be commenced to recover the debt.

Sale of Land for Arrears of Rates and Charges

Where rates on a property remain overdue for the times referred to below, no payment arrangements exist, and other collection action has failed to recover the amount, Council will commence proceedings to sell the property subject to and by virtue of its powers under Division 3 Part 12 Chapter 4, section 140 of the Regulation.

This division applies if some or all of the rates have been overdue for at least:

- generally - 3 years; or
- if the rates or charges were levied on vacant land or land used only for commercial purposes, and the local government has obtained judgment for the overdue rates and charges – 1 year; or
- if the rates or charges were levied on a mining claim – 3 months.

Periodically a review will be undertaken to select properties that have rates and charges remaining unpaid for at least the periods referred to above. A report shall be presented to Council to request a resolution to proceed to the Sale of Land process for the selected properties.

As soon as practicable after the resolution, a Notice of Intention to Sell detailing arrears, land and terms of the resolution must be issued to all parties who have an interest in the land.

Sundry Debtors

Statements are issued the first working day of the start of the month.

A reminder letter will be issued to the debtor 14 days after the issue of the statement at the end of the month. This reminder letter requires payment to be made within fourteen (14) days.

A Letter of Demand may be issued 30 days after the first statement issued. This letter requires payment to be made with seven (7) days.

Where payment is not received, the account may be referred to the nominated debt collection agency to initiate recovery action.

Initial Recovery Action

As soon as practicable, following the expiration of the due date of the Letter of Demand, any Sundry Debtor who:

- has a balance over \$500; or
- has not entered into an approved payment arrangement; or
- does not have their account on hold; or
- has defaulted on their agreed payment arrangement

may be forwarded to Council's debt collection agency. Debt recovery action shall include an initial seven (7) day letter of demand, telephone contact where possible, followed by a final seven (7) day solicitor's demand letter. The letters issued will explain the possible financial impact if Council proceeds to legal action, including an estimate of legal costs.

Legal Action

Legal action is seen as a last resort to enforce collection and will be undertaken if the debtor fails to respond to the contact made by Council or its representatives, following the issue of the previously mentioned correspondence.

The decision as to whether the amount outstanding warrants the use of further legal action for recovery and the appropriate level of legal action to be taken, rests with the Director of Corporate Services.

Payment Arrangements

Council may approve an arrangement with an individual debtor, and all payment arrangements will be confirmed in writing. Failure to meet the agreed payments may result in the cancellation of the payment plan and referral to Councils' debt collection agent.

Bad Debts / Write Offs

Where it is determined, to the satisfaction of the Director of Corporate Services that a debt is irrecoverable or uneconomical to recover, the debt may be written off. Any debts will be written off in accordance with the delegated authority.

Sundry Debts

A debt that meets any two of the following criteria:

- All reasonable collection action has been taken and was unsuccessful
- No possibility for collection exists now or in the future
- The debtor cannot be readily located or served Court documentation
- Legal proceedings that are statute barred or the debt is legally unenforceable
- The debtor is an inoperative corporation and without assets; or
- The Debtor is a natural person who is an undischarged bankrupt.

Rates and Charges

Where the property description of the land no longer exists and meets any two of the following criteria:

- All reasonable collection action has been taken and was unsuccessful
- No possibility for collection exists now or in the future
- The debtor cannot be readily located or served Court documentation
- Legal proceedings that are statute barred or the debt is legally unenforceable
- The debtor is an inoperative corporation and without assets; or
- The debtor is a natural person who is an undischarged bankrupt.

Delegation of Authority

The following delegations are only to be used when administration adjustments and/or corrections are to be made for rates and charges, interest, lost discount and legal costs or other accounts receivable per customer as a bad debt.

- Council Resolution required for amounts over \$1000

- Chief Executive Officer amounts of up to \$1000
- Director Corporate Services amounts of up to \$250
- Manager Finance and Administration amounts of up to \$100
- Rates Officer \$10

Responsibilities

Rates Officer to process Small Debt Write Offs for amounts up to and including \$10 monthly and include report in the monthly End of Month Reporting documentation.

Rates Officer to a register of write offs as detailed in 'Delegation of Authority'

Rates Officer to maintain contact and liaise regularly with Debt Collection Agency files have been referred.

Repeal

This policy repeals all previous versions of policies relating to Rates and Charges Debt Recovery and the Sundry Debt Recovery Policy.

Definitions

TERM	DEFINITION
Council	Mayor and Councillors of Carpentaria Shire Council
Debtor	Any person or other legal entity, including a ratepayer, who owes money to Council
Debt Collection Agency	Third party providing debt collection services for Council
The Act	<i>Local Government Act 2009</i>
The Regulation	<i>Local Government Regulation 2012</i>

Adopted by Council 16 June 2022 by Resolution 0621/016.



Mark Crawley

Chief Executive Officer