



## GLEN INNES SEVERN COUNCIL

### Debt Recovery Policy

<b>RESOLUTION NUMBER:</b>	10.06/20 18.03/19 14.09/15 11.06/14 8.09/10 20.11/07 Amendment to Policy: 5.08/07 7.07/07	<b>MEETING:</b>	25 June 2020 28 March 2019 24 September 2015 26 June 2014 23 September 2010 22 November 2007 23 August 2007 26 July 2007
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### **PREAMBLE**

#### **AIMS**

This policy 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 with reasonable guidance in regards to the procedures and processes related to the recovery of the debt owed to Council.

A 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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**RESERVED RIGHTS**

Council reserves the right to vary this policy and to apply any variation retrospectively to the extent that it is lawful to do so or to revoke this policy or parts thereof.

**POLICY VARIATION AND REVIEW**

This Debt Recovery Policy shall be reviewed every three (3) years, or earlier if deemed necessary, to ensure that it meets the requirements of legislation and the needs of Council. The term of this policy does not expire on the review date, but shall continue in force until superseded, rescinded or varied either by legislation or a new resolution of Council.

**POLICY TO BE CONSISTENT WITH LEGISLATION**

Where this policy or associated debt recovery procedures are found to be inconsistent with legislation, this policy or associated debt recovery procedures shall be immediately reviewed and amended to ensure consistency.

**POLICY TO BE CONSISTENT WITH OTHER COUNCIL POLICIES**

Where this policy, or parts thereof, conflicts with another Council policy or contains ambiguity of purpose, intent or action, the General Manager shall make an "*Interim Instruction*" by way of a written order of the General Manager stating which policy, or part thereof, shall have precedence or to clarify any ambiguity, taking into consideration the nature and circumstances of the issues pertaining to the conflict or ambiguity incident.

The General Manager's "*Interim Instruction*" shall remain in force until either the General Manager varies or cancels it or until Council adopts related amendments to the relevant policy documents.

As soon as is practicable, the General Manager shall recommend to Council the necessary amendments to relevant policy documents to remove such conflict or ambiguity.

**ASSOCIATED DEBT RECOVERY PROCEDURES**

The General Manager shall establish, maintain, review, amend, or develop associated debt recovery procedures in order to facilitate the day-to-day operational aspects of debt recovery management and administration.

Associated debt recovery procedures shall supplement, complement, support, be consistent with, refer to, form part of, and be governed by, relevant legislation and this policy.

The General Manager shall undertake a review of associated debt recovery procedures every three (3) years, or as required.

**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;

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- Act “at arm’s 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 and Consumer Commission (ACCC) and Australian Securities and Investments Commission (ASIC) publication ‘Debt Collection Guideline: for Collectors and Creditors’, July 2017 in dealings with payment defaulters.

Extracts from the Debt Collection Guideline states that the “guideline explains the application of Commonwealth consumer protection laws which are relevant to debt collection”. These guidelines give guidance on what collectors and creditors “should and should not do to minimise the risk of breaching the Commonwealth consumer protection laws” administered by the ACCC and the ASIC. They also look at the prohibitions and remedies under Commonwealth consumer protection laws applicable to 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.

#### **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.

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**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 and 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.

**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, and the Acting General Manager 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), and other items considered to be of reasonable value.

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**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.

**Pecuniary Interest/Non-Pecuniary Interest**

A pecuniary interest is a situation where a person could generate a personal monetary interest from their official duties (*or there is the potential to gain financially from their public position*).

A pecuniary interest might result from:

- Owning property;
- Having unpaid debts to others, or;
- Receiving hospitality or travel.

It is important to note that a person does not need to directly experience the financial gain or loss to give rise to a pecuniary conflict of interest in their role as a public official. It will remain a conflict of interest if a family member, close associate or someone with some proximity to the person has the pecuniary interest.

Non-pecuniary interests may have a financial component but may arise from personal or family relationships or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity or other personal involvement that could bias a person's judgement or decisions even though there may not be any financial benefit to the person.

**Reasonable Person**

A reasonable person is a fictitious individual who is neither the most cautious nor the most foolhardy. It is an invention that allows courts and others to objectively decide each case on its merits (i.e. test) by asking appropriate questions to determine what a reasonable person, in the same situation, given the same knowledge, would do or not do or would find acceptable or not acceptable.

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**Reasonable Time**

Reasonable time, for the purposes of this policy, shall mean in relation to the payment of debt, by the due dates:

- Established by legislation;
- Stated within the terms and conditions of a contract, other agreement, or provisions of a service;
- Stated in official notifications;
- Stated within this policy or associated debt recovery procedures;
- Recommended by industry best practice guidelines; and
- Determined at the discretion of Council or the General Manager.

Council reserves the right to re-define the term “reasonable time” for its purposes.

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 refer to, but are 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.

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**User**

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

**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 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”, 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 (1<sup>st</sup>) working day after the expiry of the due date of payment with official notifications being issued as listed below.

### 8.1 FIRST STAGE - REMINDER NOTIFICATION

The intentions of the first (1<sup>st</sup>) 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.

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**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 - LEGAL DEMAND LETTER**

The intention of the second (2<sup>nd</sup>) stage is to afford the payment defaulter a final opportunity to ensure the debt outstanding is paid in full or a satisfactory payment arrangement is entered into before legal action is commenced.

**Policy Item**

In the case where there is a failure to comply with the reminder notice, Council's Debt Recovery Agent will issue a Legal Demand Letter by post to the last known address of the payment defaulter, giving a further seven (7) days either to pay in full or to enter into an arrangement satisfactory to Council. At the issue of this letter a legal fee as per Council's Operational Plan or Council's Debt Recovery Agent's charge, will be levied on each applicable account.

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

**8.3 RESPONSIBILITY OF COUNCIL OFFICERS TO MAKE CONTACT BY PHONE, SMS AND/OR EMAIL****Policy Item**

At the expiry of fourteen days from the sending of the Legal Demand Letter the Council officer implementing these steps, or Council's Debt Recovery Agent must make a reasonable attempt to contact any payment defaulter against whom legal action may be commenced by phone, sms and/or email to try and get them to either make payment of the amount in full or come to a satisfactory payment arrangement for same. As part of Council's adopted sustainable debt recovery process this obligation is imposed to ensure that Council is presented to the community as a Council open for business and reasonable in its approach.

Even though this obligation falls on the Council officer or Council's Debt Recovery Agent, failure to do so will not invalidate the debt recovery process.

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

The intention of the third (3<sup>rd</sup>) stage is to formalise a final resolution of payment of the debt should the first (1<sup>st</sup>) and/or second (2<sup>nd</sup>) 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.

#### 8.5 FOURTH STAGE – COMPASSIONATE LATE STAGE INTERVENTION

The intention of the fourth (4<sup>th</sup>) stage is to attempt face to face contact with the payment defaulter as contact methods in the first three (3) stages have been unsuccessful.

***Policy Item***

In a highly compassionate approach, Council's Debt Recovery Agent may visit each payment defaulter to enquire whether they require any assistance and to give Council a better understanding of the defaulter's circumstances.

The approach taken in such visits is confidential, compassionate and practical.

If the payment defaulter is willing, the Agent may be able to:

- Empathetically listen to the payment defaulter to understand their situation;
- Explain concessions available from Council;
- Propose a payment plan to resolve the outstanding debt;
- Introduce the payment defaulter to a local Financial Counselling service;
- Introduce the payment defaulter to other local professionals for additional help.

With the consent of the payment defaulter, Council or its agent may take further actions to help the payment defaulter to resolve the situation.

An Attendance Fee is incurred per Agent's visit, according to the time taken and charged to the overdue account. This fee will then be passed onto the payment defaulter.

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## 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 the *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*:

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

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**Policy Item**

The General Manager shall be authorised to enter into an arrangement only after making the necessary enquiry to satisfy him/herself as 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 defaulter's 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 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.

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.

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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, 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**

These include, but are 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 relevant matter 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.

**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.

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## 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 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.

#### 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;

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- 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 **\$1,000 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*:

- 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.

Reference Number:	Version Number: Date of Effect: 25/06/20	Review Date: June 2023	Responsible Officer: CFO
Related Documents:			

**Policy Item**

The General Manager is authorised to issue written orders to write off debts (*other than rates and other charges*) of **\$1,000 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 with the *Local Government Act 1993*, as amended:

- Section 567 - Writing off of accrued interest.

**Policy Item**

All applications for personal hardship or for reasons beyond a person's control shall be implemented in accordance with Council's Hardship Policy.

#### **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:

- Part 2, 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.

Reference Number:	Version Number: Date of Effect: 25/06/20	Review Date: June 2023	Responsible Officer: CFO
Related Documents:			

**Policy Item**

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

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

- 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 his/her affairs, or which made it impracticable for him/her, or others, to do so and can furnish medical or other relevant evidence or proof 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 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.

Should the General Manager not receive the necessary evidence or proof within a reasonable time, or is unable to readily examine the evidence or proof by the time fixed for the sale, or determines that the evidence or proof 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.

Reference Number:	Version Number: Date of Effect: 25/06/20	Review Date: June 2023	Responsible Officer: CFO
Related Documents:			

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

A Water Meter Restrictor Fee shall be issued to the defaulting owner of the property, 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 be 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 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 services 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.

**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 sufficient notice of cancellation by the user is not provided, except where otherwise excluded by 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 of provision of a service or;
- Council.

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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 2010;*
- *Landlord and Tenant (Rental Bonds) Act 1977;*
- *Residential Parks Act 1998;* and
- *Consumer, Trader and Tenancy Tribunal Act 2001;*

and more broadly:

- 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.

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## 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.

## 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.

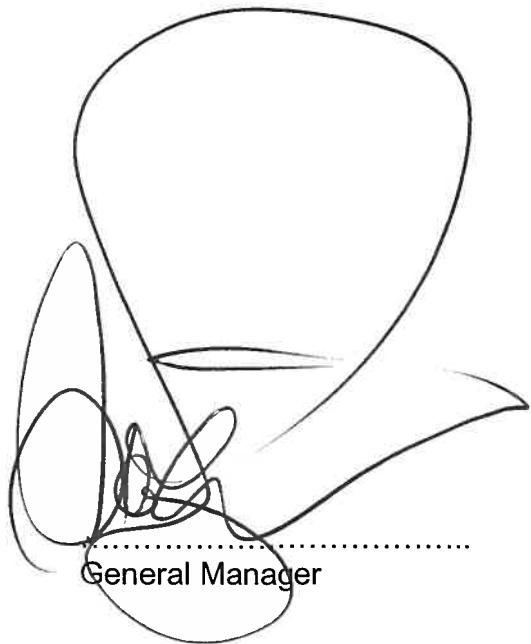
In cases where Council has written off a debt related to an employee, no further credit shall be extended to that employee.

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.

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Related Documents:			

**17. IMPLEMENTATION/COMMUNICATION**

It will be the responsibility of the Chief Financial Officer to induct staff into this Policy where required. Revised versions of the Policy that contain significant changes will be communicated to all relevant staff by the Chief Financial Officer.



.....  
General Manager

7/9/20  
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Date

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Reference Number:	Version Number: Date of Effect: 25/06/20	Review Date: June 2023	Responsible Officer: CFO
Related Documents:			