

Policy

Debt Recovery 2022



INFORMATION ABOUT THIS DOCUMENT

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Document History		
Doc No.	Date Amended	Details/Comments
	27 February 2008	Resolution No. 11515 – New Policy
	29 April 2009	Resolution No. 12320 – Inclusion of timeframes (recommended by OLG)
	27 March 2013	Resolution No. 234 – Changes to amount outstanding prior to legal action
	26 July 2017	Resolution No. 2544 – Enhanced procedural steps, inclusion of water restriction device, summary of debt recovery timeframes and litigation options
D22/1521	23 February 2022	Consolidate process, all Debtors under one process; Arrangements streamlined; link to other policies Adopted by Council [res.2022/23]

Further Document Information and Relationships	
Related Legislation*	<i>Local Government Act 1993</i> <i>Local Government (General) Regulation 2021</i> <i>Privacy and Personal Information Protection Act 1998</i>
Related Policies	Council's Revenue Policy Hardship Policy Sale of Land to Recover Unpaid Rates and Charges
Related Documents	Liverpool Plains Shire Council – Fees and Charges Debt Management and Hardship Guidelines – November 2018 from Office of Local Government

**Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.*

Contents

1. Purpose	4
2. Commencement.....	4
3. Scope	4
4. Definitions and Interpretation	4
5. Background.....	5
6. Policy Statement.....	5
6.1 Payment of Rates and Charges.....	5
6.2 Interest on Overdue Rates and Charges	6
6.3 Payment Arrangements.....	6
6.4 Recovery Action	7
6.5 Write Off - Uneconomical to Recover	8

1. Purpose

When undertaking debt recovery in order to reduce outstanding debts, Council will be guided by the principles of:

- Equity – to ensure consistency, fairness, integrity and confidentiality of all proceedings for both Council and the customer.
- Engagement - Council is committed to engaging with customers with arrears to obtain payment to satisfy their debt and prevent avoidable escalation of the debt recovery processes and the use of legal action.
- Transparency – ensuring obligations of Council’s customers are clear in assisting them to meet their financial obligations where possible.
- Financial Hardship – Council will assess cases of financial hardship on an individual basis and will be courteous and respectful.
- Compliance – to fulfil the statutory requirements of the Local Government Act 1993 with respect to the recovery of Rates and Charges and any other debts and compliance with the Office of Local Government Debt Management and Hardship guidelines.
- Financial Sustainability – to maximise collections of outstanding debts, optimise Council’s cash flow and overall financial performance ensuring Council’s Rates Outstanding Ratio remains at or below the industry standard.

2. Commencement

This Policy is effective from the date of resolution by Council and shall remain in force until repealed by resolution of Council.

3. Scope

The policy applies to all Council staff, elected members of Council and contracted service providers.

This policy applies to all debtors (including ratepayers) who have outstanding monies owed to Council.

4. Definitions and Interpretation

In this Policy, the following terms shall be interpreted to have the following meanings:

Term	Definition
Act	Local Government Act 1993
Claim	A claim made to the Court by a party (whether a claimant, a defendant or other party)
Council	Liverpool Plains Shire Council
Customer	Ratepayer or Sundry Debtor
Default	A failure by the Customer to abide by the terms and conditions agreed under a payment arrangement for the payment of outstanding rates and charges or sundry debtor account

Interest	The fee charges by Council, expressed as a percentage, on rates and charges that remain unpaid after the due date
Interest Rate	Made in accordance with Section 566 of the Local Government Act 1993
Judgment and Default Judgment	Includes any order for the payment of money, including an order for payments of costs
Mercantile Recovery Agent	An organisation engaged by Council to recover a debt owed to Council
Payment Arrangement	An agreement entered into by Council and Customer for the payment of outstanding rates, charges and fees under an agreed instalment payment arrangement plan
Pensioner	An eligible pensioner as defined in Clause 134 of the Local Government (General) Regulations 2005
Pensioner Rebate	A rebate granted to eligible pensioners in accordance with Section 575 of the Local Government Act 1993
Rates and Charges	Ordinary Rates and Annual Charges levied in accordance with the Local Government Act 1993
Ratepayer	The person liable for payment of the rates and charges for the property in accordance with Section 560 of the Local Government Act 1993
Sundry Debtor	A person, organisation, company, or other entity that has a debt or legal obligation to pay an amount to Council
Sundry Debtor Account	An account issued by Council for a charge or service
Write Off	A debt declared non recoverable

5. Background

Council levies annual Rates and Charges on all rateable properties in Council's Local Government area in July of each year, with instalment notices issued quarterly. Water consumption charges are issued quarterly and Council issues sundry invoices for any other charges specified in the Fees and Charges to Sundry Debtors.

Council must ensure that monies owed are collected in a timely, efficient and effective manner to finance its operations, ensure effective cash flow management and reduce the likely occurrence of unrecoverable debts.

6. Policy Statement

6.1 Payment of Rates and Charges

Rates notices are issued by the end of July each year in accordance with Section 562 of the Local Government Act 1993.

Section 562(3) of the Act defines that rates and annual charges may be paid by a single instalment by 31 August or by quarterly instalments. If payments are made by quarterly instalments, the instalments are payable as follows:

- Instalment 1 Due 31 August
- Instalment 2 Due 30 November
- Instalment 3 Due 28 February

Instalment 4 Due 31 May

Council will issue instalment notices at least one (1) month prior to the instalment due date.

Water consumption charges are issued quarterly in March, June, September and December, with customers provided at least 21 days for payment.

Rates, Fees and Charges not paid by the due date are considered outstanding.

The General Manager or their delegated representative is responsible for the collection of outstanding rates, fees and charges.

6.2 Interest on Overdue Rates and Charges

Council will charge interest on outstanding Rates and Charges that remain unpaid after they become due and payable in accordance of Section 566 of the Act. Interest accrues on a daily basis.

The rate of interest is set by Council but must not exceed the rate specified for the time being by the Minister for Local Government. Accrued interest is, for the purpose of its recovery, taken to be a charge which is due and payable.

6.3 Payment Arrangements

Council accepts that there are Customer who cannot meet mandatory instalment amounts, water consumption charges or sundry debtor accounts by the due dates.

Council therefore will accept an alternative payment schedule by way of a short extension or a payment arrangement under section 564 of the Act. Payment arrangements can be weekly, fortnightly or monthly payments provided that Council determines that the reasons for the arrangement is acceptable.

Payment arrangements should, where possible, seek to have the outstanding amount, and future rate instalments and water consumption paid in full by 30 June of the current financial year.

Where payment arrangements will not pay the Rates, Fees and Charges in full by 30 June, the arrangement should, where possible, pay the outstanding amount, and future instalments and water consumption within twelve (12) months.

Customers who are not able to enter into an arrangement that would clear the outstanding Rates, Fees and Charges within (12) twelve months should be referred to the Hardship Policy and be encouraged to seek financial support.

Arrangement offers for amounts that are insufficient to pay the outstanding amount will only be accepted for a maximum period of three months to allow the Customer to seek financial support and make further contact with Council.

Payment arrangements that are for a period of greater than three (3) months will be documented in writing as a Payment Arrangement and confirmation sent to the Customer. This formalises the agreement and will commit the Customer to the agreed payment schedule.

In accordance with Section 568 of the Local Government Act 1993, payments will be applied towards the payment of Rates and Charges in the order in which they became due.

All Customers who enter into a payment arrangement will continue to have interest charged on the outstanding amount in accordance with Section 566 of the Act.

Customers who default on two (2) or more occasions on the payment arrangement entered, will have the payment arrangement cancelled and recovery action may continue.

6.4 Recovery Action

Recovery action will commence with a Reminder Notice being issued to the Customers whose Rates, Fees and Charges are greater than \$50.00, remain outstanding seven (7) days after the due date and no payment arrangement exists. The Customer will be given 14 days to pay.

6.4.1 Unpaid Residential Water Consumption Charges over \$100

- a) For residential properties, water consumption charges greater than \$100 that remain unpaid will be issued with an Intention to Restrict Water Supply, advised of the additional charges and given 14 days to pay.
- b) If Council receives no response, a Water Restriction Notice is to be sent on the Ratepayer and also the occupier of the property advising their water will be restricted in 7 days.
- c) Failure to make payment or enter into a mutually agreeable payment arrangement a water restrictor may be installed. At installation of the water restrictor, the Customer will be provided with a Restrictor Notice, charged for the installation of restrictor, as per the Fees and Charges, and provided 7 days to make payment or enter into a mutually agreeable payment arrangement. The restrictor is to remain in place until payment in full has been received or application approved under the Hardship Policy.
- d) The recovery action, for failure to pay then follow process 6.4.2.

6.4.2 All other unpaid Rates, Fees and Charges over \$100

- a) For Rates, Fees and Charges greater than \$100 that remains unpaid will be issued with a Final Notice advising that failure to pay or enter a mutually agreeable payment arrangement may result in legal action being initiated to recover the debt, together with any interest and legal charges. The Customer will be given 14 days to pay.
- b) For Rates, Fees and Charges greater than \$500, an attempt at contacting the Customer by phone or email (if details available) will occur.
- c) For ratepayers with more than one rates instalment outstanding or other Fees and Charges over \$500, legal action may be taken by way of a Statement of Claim. Legal costs associated with the Statement of Claim will be raised as a charge against the property or Sundry Debtor account. Recovery action will continue until such time as the outstanding debt including all legal costs incurred by Council are paid in full, or a mutually suitable payment arrangement is made with Council to pay the outstanding amount, including legal costs, as per this

policy. If the Customer fails to pay in full including legal costs or contact Council or Council's mercantile recovery agent for a mutually suitable payment arrangement, at the completion of 28 days from the date of service of the Statement of Claim, Default Judgment will be entered against the Customer. Council will defend any action in relation to a Statement of Claim in court proceedings if required to do so.

- d) Default Judgment and Post Judgment if a Statement of Claim is served and the Customer, makes no mutually suitable payment arrangement in the next 28 days; does not pay the amount claimed, including legal costs; does not apply for a Court Instalment Order to pay off the amount claimed, including legal costs; or does not lodge a notice of defence with the court disputing the claim, then the Customer may be liable to incur a Default Judgement.

Once Default Judgment has been entered against a Customer, the following post Judgement actions are then enforceable. These include but are not limited to: Writ of Execution; Garnishee Orders (wages, bank and third party); Examination Notice; Examination Order; Rent for Rates; Warrant of Apprehension; Creditors Statutory Demand (Windup Notice); Bankruptcy Notice; Sale of Land (see Sale of Land for Unpaid Rates and Charges Policy).

Credit reporting agencies access some court records relating to debt recovery. Specifically, they access details of all Default Judgments and record these on the individual's credit history, in some cases for five (5) years. If the debt has been paid in full, Council will upon request, write a letter to the debtor confirming that the debt has been repaid in full which may then be presented as proof of payment. A debtor has no right to have a Judgment erased upon payment of the debt. The debtor had the opportunity to avoid Judgment when they were issued with the Statement of Claim and Judgment warning letter. A Judgment is a valid court Judgment. Council does not report debts to any credit reporting agencies and is under no obligation to assist debtors to delete factually correct court Judgment history.

6.5 Write Off - Uneconomical to Recover

If a debt cannot be recovered, or Council chooses not to take further action, outstanding debts may be written off. This can occur before, during or after any legal action has commenced and may include:

- a) Rates and charges in certain circumstance – clause 131 Local Government (General) Regulation
- b) Accrued interest – section 567 Local Government Act
- c) Pensioner's rates and charges – section 582 and section 583 Local Government Act, and
- d) Sundry fees and charges – section 610E Local Government Act.

Bad debts may be written off by the General Manager within delegated authority.