

POLICY		Responsible Department	Corporate Services
		Original Adoption Date	10.03.11
		Current Adoption Date	26.06.19
		Audit Committee Review Date	04.06.18
		Date of Review	26.06.22

TITLE	POLICY – RATE DEBT RECOVERY
Latest Review Changes	19.06.19
Previous Council Reviews	09.12.15, 27.06.18
Previous Audit Committee Reviews	

Applicable Legislation:

Related Policies (alphabetical list):

Related Procedures:

Reference Documents:

Rates

1. BACKGROUND

The Local Government Act 1999 (Act) describes the general principles for payment, remission, postponement and non-payment of rates.

Section 181(8) of the Act provides that if an instalment of rates is not paid on or before the last day for payment, the unpaid rates will be regarded as being in arrears and a fine of 2% is payable.

Any rates that remain in arrears will accrue monthly interest on the amount owing in arrears (including any fines and interest). The rate of interest is variable according to current cash advance debenture rate as at 1st July and is prescribed in Section 181 of the Act.

The purpose of this penalty is to act as a deterrent to ratepayers who might otherwise fail to pay their rates on time and to allow Council to recover the administration costs of following up unpaid rates.

2. SCOPE

This policy outlines the circumstances under which debt collection will commence and continue through to sale of land for the recovery of unpaid rates.

3. PROCESS

The fine shall be calculated on or about the third working day following the last day to pay.

Where an amount of rates remains outstanding after the due date (last day to pay) a notice of overdue rates (Final Notice) will be sent to the ratepayer as per attached sample.

Any rates that remain in arrears will accrue monthly interest on the amount owing in arrears (including any fines and interest). The rate of interest is variable according to current cash advance debenture rate as at 1st July and is prescribed in Section 181 of the Act. The interest shall be calculated at the beginning of each month.

Section 181(9) of the Local Government Act 1999 states:

- *a Council may remit any amount payable under section (8) in whole or in part.*

Upon written request from a ratepayer and under agreed special arrangements a remission of fines and/or interest may be granted at discretion of the Group Manager Corporate Services.

Rates which remain in arrears for a period exceeding thirty days and ratepayer doesn't have in place payment arrangement with the Council, debt will be subject to recovery action via Council's debt collection agency.

The Rates Officer will liaise regularly with Council's debt collection agency during the rate debt recovery process.

The debt collection recovery procedures are as follows:

- a letter of demand issued by Council's collection agency with seven days to pay
- claim (summons) will be issued if rates remain outstanding and no special payment arrangements have been made
- if after twenty one days the claim has not been paid (claim personally served by a bailiff or by post if bailiff unable to serve personally) an Investigation Summons is issued (judgement signed). This affects the ratepayer's credit rating and a court hearing date is set that the ratepayer must attend and a Magistrate may make an order for payment (Council is not required to attend Court)
- if no payment or contact from the ratepayer is made following the investigation summons (this includes attendance at the Court hearing), a Warrant of Arrest is issued, this also requires the ratepayer to attend Court and a Magistrate may make an order for payment (special arrangements). If ratepayer does not attend court, Magistrate will rule in favour of Council and the ratepayer will be arrested
- when rates have been in arrears for three years or more and Council has unsuccessfully pursued all reasonable attempts to secure payment giving regard to hardship constraints by the ratepayer, the Council has the option under Section 184 of the Local Government Act 1999 to pursue recovery of rate arrears through the sale of the respective land
- all legal costs (including those accrued during the sale of land process) are recoverable from the ratepayer.

Additional rates that have become owing since the claim was commenced can be included and if a judgement has been obtained, that judgement can be amended to reflect the amount owing, if additional rates have become due in the financial year. Strictly speaking, the Council should plead MCR 24 when proceedings are commenced.

Magistrate Court Rule 24(4) states that *"a Council constituted under the Local Government Act 1999 making a claim for an instalment of rates may plead the instalment owing and anticipate the other instalments and fines that may become owing in that financial year – the Council may obtain judgement and amend any judgement to reflect the amount owing from time to time for that financial year, up to the total anticipated, by filing a statement of the amount due at that time, which should be served."*

Councils under the Local Government Act 1999 can charge rates by up to four instalments. To save the expense of potentially four separate claims sub-rule 24(4) allows Council to sue for the first instalment and then anticipate future defaults within the same financial year. If they occur any judgement can be increased to allow for the later defaults and fines. It may follow that a Council that sued separately for each instalment may be disallowed its costs on all but the first action for failing to avail itself of this cost saving procedure.

Section 184 of the Local Government Act 1999 allows Council to sell any property where any rates have been in arrears for three years or more. Council is required to notify the owner of the land, and any other person having an interest in the land, of its intention to sell the land, to provide details of the outstanding amounts, if payment of the full outstanding amount (by cash or bank cheque) is not received within one month, its intention to sell the land. Except in extraordinary circumstances, Council will enforce the sale of land for arrears of rates which will be minuted accordingly.

A resolution will be required by Council to authorise the Chief Executive and Administrator to affix Council's Seal and sign any necessary documentation in relation to the sale of the land.

Writing off Bad Debt

Section 143 of the Local Government Act 1999 states:

- (1) A Council may write off any bad debts owed to the Council-*
 - a. If the Council has no reasonable prospect of recovering the debts;*
or
 - b. If the costs of recovery are likely to equal or exceed the amount to be recovered*

- (2) A Council must not write off a debt under section (1) unless the Chief Executive Officer has certified-*
 - a. That reasonable attempts have been made to recover the debt; or*
 - b. That the costs of recovery are likely to equal or exceed the amount to be recovered.*

- (3) If a council delegates the power to write off debts under this section, the council must set an amount above which the delegation will not apply.*

Council Chief Executive is currently the sole person who can write off any debts owed by Council. However, the Chief Executive may delegate powers to other officers of Council pursuant to Section 44 of the Local Government Act 1999.

4. REVIEW & EVALUATION

This policy will be reviewed and evaluated every three years.