

# Policy

## Debt Management and Hardship

Version 1.1

Adopted by Council at its meeting on 17 August 2023

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Corporate Services  
Financial Services  
Council Policies/Protocols/Procedures  
See Version Control

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## 1. Debt Management and Hardship Policy objective

The purpose of this policy is to outline Council's debt recovery framework and considerations to be used in recovering monies owed to Council. Council recognises there are cases of financial hardship requiring respect and compassion. This policy establishes guidelines for the assessment of hardship applications applying the principles of respect, fairness, integrity, flexibility, confidentiality and compliance with relevant statutory requirements.

### 1.1. Definitions

Debtor – an entity or individual owing money to Council.

Debt – money owed to Council.

Outstanding Debt – Monies owed to council beyond the due date. That is a debt in arrears.

Interest rate – as prescribed by Office of Local Government

### 1.2. Policy application

This policy applies to any person or entity owing rates, water charges, fees or other debts to Council. In the case of hardship, this policy applies to all applications for waiving, deferment and alternative payment arrangements, or the writing off of rates, fees, charges and interest accrued on such debts.

### 1.3. Policy intent

The objectives of this Policy are:

- To provide a framework for the efficient and effective collection of outstanding debts balanced with a respectful and sensitive approach to ratepayers and other debtors suffering financial hardship;
- To recover monies owing to Council in a timely and effective manner and ensure sound cash flow management that contributes to low levels of outstanding rates and charges;
- To provide a process that is ethical, transparent and compliant with legal obligations and legislation; and
- To establish an effective, accountable and transparent framework for managing the circumstances under which Council will assess requests for relief due to financial hardship.

Council will treat all customers fairly and consistently in considering their circumstances. All matters will be treated confidentially under this policy.

## 2. Policy

### Background

At any point in time, Council has debts as a result of:

- Legislative mechanisms that prescribe the way Council must levy rates and annual charges;
- The provision of water services that result in billing for water usage;
- The carrying out of regulatory functions that result in fees and charges levied as a debt;
- The provision of access to community buildings and facilities by way of lease and licence arrangements; and
- A range of services and operations that result in charges levied as debts, including waste and private works.

These various mechanisms that result in the recognition of debts mean that Council is managing approximately 42,000 individual accounts at all times.

As a result, Council is cognisant that debt recovery processes need to remain efficient in order to maintain the costs of debt recovery at low levels.

### Responsibility on Ratepayers and Debtors

Council is reluctant to commence debt recovery actions but does so if there is no communication from the ratepayer or debtor. The onus is on the ratepayer or debtor to contact Council to discuss options such as a payment arrangement. Council will fulfil the statutory requirements of the Local Government Act 1993 with respect to the recovery of rates and other debts.

Ratepayers and other debtors are responsible for ensuring their contact details for the service of notices and other communications remain up to date.

### Rates, Annual Charges and Water Usage Charges

Council issues rates and instalment notices and water billing notices thirty days prior to due dates. If an amount is overdue, a reminder notice is sent 14 days after the due date. If a ratepayer cannot meet the extended due date (approximately one month after initial due date) as stated on the reminder notice, they are encouraged to contact Council to apply for a suitable payment arrangement.

Those that have not paid the full outstanding amount by the extended due date or have not contacted Council to apply for a payment arrangement, risk this amount being escalated to external debt recovery. Acceptable payment arrangement conditions are outlined in this policy under the Hardship section.

### Debt Recovery timeline (indicative only)

Process Steps	(approximately)
1. Reminder Notice sent (by Council)	2 weeks after initial due date
2. Reminder Notice amount due sent	4 weeks after initial due date
2.1 Reminder Notice amount due SMS/email	6 weeks after initial due date
2.2 Reminder Notice amount due call by Debt Recovery Officer	7 weeks after initial due date
2.3 Notice amount due to avoid Statement of Claim message/email	8 weeks after initial due date
2.4 Reminder Notice amount due last warning to avoid Statement of Claim message/email	9 weeks after initial due date
3. Demand Letter sent (by Debt Recovery agent)	10 weeks after initial due date
4. Demand Letter action required - full payment or payment arrangement needed	12 weeks after initial due date
5. Statement of Claim (legal action) - only if a payment arrangement has not been agreed or complied with	14 weeks after initial due date

### Other Debtors

Invoices are raised as debtor information comes to hand. The due date for payment of all invoices is 30 days after the invoice date. Payment Arrangements may be made where appropriate at Council staff discretion. Council reserves the right to commence external debt recovery action.

Where amounts remain outstanding, if the account is an ongoing account, further credit to that debtor will be withdrawn until the account is paid. Council reserves the right to permanently withdraw and to refuse future account applications from debtors.

### External Debt Recovery

Whilst Council encourages ratepayers and other debtors to enter into payment arrangements, it may be necessary to take legal action to recover debts in some circumstances. Customers experiencing financial hardship are encouraged to apply in writing for relief under Councils Hardship Policy.

Where payment is overdue, a reminder notice has been sent and an appropriate payment arrangement has not been agreed, the following recovery actions will occur:

- Letter of Demand from Council's Debt Recovery agent
- Where available and appropriate, Council's Debt Recovery agent may use additional channels of communication (such as telephone calls and email) to inform ratepayers and debtors of outstanding debts

These actions will be limited by the contact information Council holds. In many instances Council only holds the address nominated for the service of notices and may not have phone or email contact details.

If those processes are not successful, legal recovery action will commence. The legal recovery process may include the following:

- Statement of Claim
- Field Calls/Skip Tracing
- Judgement
- Garnishee
- Rent for Rates
- Examination Notices/Orders
- Writ of property
- Bankruptcy
- Sale of Land

### **Legal Costs**

Should it be deemed necessary for Council to take legal action to recover rates and charges, any costs awarded to Council by a court in these proceedings are a charge on the land, in accordance with section 550 of the Local Government Act 1993 and are payable by the debtor.

### **Water Restrictions**

In accordance with Section 144 of the Local Government (General) Regulation 2021 (NSW), Council may cut off or restrict the supply of water to a premises where any rates or charges in respect of the water supplied to the premises are unpaid. Council may refuse to supply water to their premises until the water rates or charges are paid (pursuant to section 144(3)(b) of the Regulation) or other suitable arrangements to pay all outstanding water rates and / or charges are made.

### **Sale of Land for Overdue Rates and Charges**

Council retains the discretion to apply the provision of Local Government Act 1993 relating to sale of land for unpaid rates, charges and interest as stated in sections 713-726.

Section 713 provides that Council, where rates and charges have been unpaid for more than five years, may sell the land to recover those outstanding amounts (excluding vacant land which can be sold with only one year's rates and charges).

Council will only sell a ratepayers principal place of living after consideration and resolution of Council and only after all other reasonable recovery options have been exhausted.

### **Debt Write Offs**

Debts considered not to be cost-effective to recover shall be written off provided that a reasonable debt recovery effort can be substantiated and the debt meets the requirements of section 213(5) of the Local Government Regulation 2021, which states:

A debt can be written off under this clause only:

- a) if the debt is not lawfully recoverable, or
- b) as a result of a decision of a court, or
- c) if the council or the general manager believes on reasonable grounds that an attempt to recover the debt would not be cost effective.

In accordance with clause 213 of the Local Government (General) Regulation 2021 and sections 377, 378 LGA 1993, Council's Instrument of Delegation provides that the General Manager is authorised to write-off and abandon money due to Council up to \$10,000.

In accordance with clause 213 of the Local Government (General) Regulation 2021 and sections 377,378 LGA 1993, Council's Instrument of Delegation provides that the Director of Corporate Services is authorised to write-off and abandon money due to Council up to \$10,000.

Debts that can remain as a charge against the property, such as rates, annual charges and water, shall not be written off.

## **HARDSHIP**

This policy recognises that ratepayers and other debtors may at times encounter difficulty in the payment of rates, water and other charges. Council's intention is to offer ratepayers in these situations a suitable payment arrangement. Hardship can result from a number of factors including but not limited to:

- Loss of employment or a change in income
- Illness, incapacity, hospitalisation
- Family breakdown or a death in the family
- Natural disaster
- A change in circumstances

### **When applications will be considered**

Council will only consider an application for rates and charges hardship relief where:

- The property is in the name of a person/s;
- The property is the owner's principal place of residence;
- The property is rated as residential or farmland; and
- There is overdue debt.

The above criteria excludes applications for hardship relief from being considered from companies or other entities, including trusts.

For non-property related debt applications, hardship relief will not be considered where debts are not in the name of individuals and will be assessed on a case by case basis.

### **Types of concession available**

The Local Government Act 1993 allows Council to provide hardship assistance to ratepayers under the following sections of the Act:

Section 564 provides that Council may enter into an agreement for the payment of rates and charges. Ratepayers and other debtors can apply for a payment arrangement if they:

- a) have overdue amounts outstanding; and
- b) can substantiate their hardship (evidence may be requested).

Section 567 provides that Council may write off accrued interest on rates and charges if, in its opinion, the person was unable to pay the rates or charges when they became due for reasons beyond the person's control, or that the payment of interest would cause the person financial hardship. Applications need to be made in writing and evidence would need to be provided.

Section 601 relates to hardship resulting from certain valuation changes and provides that Council has the discretion to waive, reduce or defer the payment of the whole or part of the increase in the amount of rates payable if hardship is proven. Applications under this section are generally only for exceptional circumstances, are limited to residential properties, need to be made in writing and evidence would need to be provided.



**Payment Arrangements**

Council recognises that providing options for debtors to keep debt at manageable and affordable levels will assist in minimising financial stress and avoiding costs associated with escalated debt recovery. In cases of hardship, Council will work with customers to put suitable payment arrangements in place.

Payment arrangements should be finalised where possible prior to the next rates being levied so the problem is not compounded and will be negotiated so that all outstanding arrears as well as any current rates and charges are cleared within a 12 month period. Longer periods outside the 12 month timeframe may be accepted in some circumstances on a case by case basis.

All ratepayers who enter into a payment arrangement will continue to have interest charged on the outstanding amount in accordance with section 566 of the Local Government Act 1993.

**Lodging a request for hardship relief**

Requests for hardship relief in the form of payment arrangements that result in all outstanding debt cleared within a 12 month period can be made by phone or in writing. A 'Payment Arrangement' form will then be prepared and sent to the ratepayer or debtor for agreement and signature.

All other requests for hardship relief including variations of the interest rate must be made in writing. Council may then request further information from the ratepayer or debtor in order to undertake an assessment of the application.

**Interest**

Council has the discretion to waive or reduce the interest rate on the outstanding amount in accordance with section 566 (3) of the Local Government Act 1993.

Requests for the writing off of any interest may also be considered by Council if both the payment arrangement obligations have been met in full and there are no longer any overdue amounts. Council will only consider write-off amounts once a written request is submitted. Requests should refer to hardship impacts and final decisions will be referred to the General Manager.

**Continuing hardship**

Ratepayers and debtors that continue to experience hardship may apply for additional hardship consideration and this will be considered on a case by case basis.

### 3. Related legislation

There are a number of legislative requirements that will apply and need to be followed under this policy:

- NSW Local Government Act 1993
- NSW Local Government (General) Regulation 2021
- NSW Privacy and Personal Information Act 1998
- NSW State Records Act 1998

### 4. Related Policies and Procedures

Related Council policies and procedures include:

- Revenue Policy
- Fees & Charge Policy
- Reduction of water related charges due to undetectable leakage Policy

### 5. Forms

Customer forms associated with the Policy will be listed on Council's website and will be subject to change as required.

### 6. Review period

This Policy will be reviewed every two years from the date of each adoption of the policy, or more frequently as required.

### 7. Roles and Responsibilities

#### **Debt Recovery Officer**

Responsible contact for initial confidential requests and maintaining records and registry of payment arrangements and debt recovery status.

#### **Revenue Coordinator**

Responsible for implementation, application and review of policy as well as escalations and dispute resolution.

#### **Manager Financial Services**

Escalated and unresolved dispute resolution and oversight of debt recovery provisions.

#### **General Manager**

Authority to write off debts within allowable limits. All other debt write-offs are by Council resolution.

## 8. Useful links

[Tweed Shire Council website - Rates and Charges](#)

## 9. Version control

Version #	Summary of changes made	Date changes made
1.0	Draft Policy created for Council consideration.	1/06/2023
1.1	Water Restrictions (section updated as below from Council meeting resolution) In accordance with Section 144 of the Local Government (General) Regulation 2021 (NSW), Council may cut off or restrict the supply of water to a premises where any rates or charges in respect of the water supplied to the premises are unpaid. Council may refuse to supply water to their premises until the water rates or charges are paid (pursuant to section 144(3)(b) of the Regulation) or other suitable arrangements to pay all outstanding water rates and / or charges are made.	22/06/2023