

 warrumbungle SHIRE COUNCIL	<b>Debt Recovery and Financial Hardship Policy</b>
	<b>Strategic</b>

### 1. Purpose

Council has a responsibility to maintain effective control over debts owed to Council including rates, charges, interest and fees. 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. This policy defines the principles and guidelines that will apply to the recovery of unpaid Rates and Charges and unpaid Sundry debtor accounts.

This policy also details the options available to ratepayers experiencing genuine financial hardship, and establishes guidelines for assessing financial hardship applications. This policy applies to all applications for alternative payment arrangements, writing off of rates, annual charges, fees or interest in accordance with the *Local Government Act 1993* (NSW) and the *Local Government (General) Regulation 2005-2021* (NSW).

### 2. Objectives

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 the 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 bases 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.

### 3. Scope

This 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.

This policy does not confer any delegated authority upon any person. All delegations to staff are issued by the General Manager in accordance with section 378 of the *Local Government Act 1993*.

The specific provisions contained within the *Local Government Act 1993* and associated Regulations must be adhered to when applying this Policy.

#### 4. Associated Legislation and Documents

<b>Associated Policies</b>	<ul style="list-style-type: none"> <li>• Code of Conduct</li> <li>• Excessive Water Usage Reduction Allowance For Breakages</li> <li>• Revenue Policy, Fees and Charges</li> </ul>
<b>Associated Legislation</b>	<ul style="list-style-type: none"> <li>• <i>Local Government Act 1993</i> (NSW)</li> <li>• <i>Privacy and Personal Information Protection Act 1998</i> (NSW)</li> <li>• <i>Local Government (General Regulation) 2005</i> (NSW)</li> </ul>
<b>Associated Documents</b>	<ul style="list-style-type: none"> <li>• Office of Local Government Debt Management and Hardship Guidelines</li> <li>• WSC – Annual Financial Statements – Statement of performance measures (Rates, annual charges, interest and extra charges outstanding percentage)</li> <li>• WSC - Council Debt Recovery and Hardship Related Guidelines and Annexures</li> </ul>

#### 5. Definitions

To assist in interpretation, the following definitions apply:

<b>Term</b>	<b>Definition</b>
Act	<i>Local Government Act 1993</i> (NSW)
Claim	A claim made to the Court by a party (whether a claimant, a defendant or other party)
Council	Warrumbungle Shire Council
Customer	Ratepayer or Sundry Debtor
Default	A failure by the ratepayer or sundry debtor to abide by the terms and conditions agreed under a payment arrangement for the payment of outstanding Rates and Charges, sundry debtor account or other debts
Interest	The fee charged by Council, expressed as a percentage, on Rates and Charges and other debts that remain unpaid after the due date
Interest Rate	Made in accordance with section 566 of the <i>Local Government Act 1993</i>
Judgment and Default Judgment	Includes any order for the payment of money, including any orders for payments of costs
Debt Recovery Agency	An organisation engaged by Council to recover a debt owed to Council
Payment Arrangement	An agreement entered into by Council and a Ratepayer/ Sundry Debtor 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 <i>Local Government (General) Regulations 2005</i>
Pensioner Rebate	A rebate granted to eligible pensioners in accordance with section 575 of the <i>Local Government Act 1993</i>
Rates and Charges	Ordinary Rates and Annual Charges levied in accordance with the <i>Local Government Act 1993</i>
Ratepayer	The person liable for payment of Rates and Charges for the property in accordance with section 560 of the <i>Local Government Act 1993</i>
Sundry Debtor	A person, organisation, company or other entity that has a debt or legal obligation to pay an amount to Council

Term	Definition
Sundry Debtor Account	An account issued by Council for a charge or service
Write Off	A debt declared non-recoverable and taken off Council's Books of Account.

## 6. Background

### Rates and charges

Council levies annual Rates and Charges on all rateable properties in the Local Government area in July of each financial year in accordance with the *Local Government Act 1993*.

Council issues instalment notices to ratepayers who elect to pay by instalments and such notices are issued at least one month prior to the due date for the instalment.

#### ***“Section 560 – Who is liable to pay rates?”***

- 1) *The owner for the time being of land on which a rate is levied is liable to pay the rate to the Council, except as provided by this section.*
- 2) *If land owned by the Crown is leased, the lessee is liable to pay the rate, except as provided by subsection (4).*
- 3) *If there are two or more owners, or two or more lessees from the Crown, of the land, they are jointly and severally liable to pay the rate.*
- 4) *The Crown is liable to pay the rate for land owned by the Crown which is subject to the Housing Act 1912 or the Aboriginal Housing Act 1998.*

#### ***Section 561 – Who is liable to pay charges?***

*The person liable to pay a charge is:*

- a. *The person who, if the charge were a rate and if the land on which the charge is levied were rateable in respect of that rate, would be liable under section 560 to pay the rate, or*
- b. *The Crown in respect of land owned by the Crown, not being land held under a lease for private purposes.”*

## 7. Policy

### 7.1 Payment of Rates and Annual Charges

Rates notices are issued by 1 August each year in accordance with section 562 of the *Local Government Act 1993* (the Act).

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

### 7.2 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 that set by the 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.

### 7.3 Payment Arrangement

Council accepts that there are ratepayers who cannot meet mandatory instalment amounts by the due dates as provided under section 562 of the Act.

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 (including water consumption where applicable) paid in full by 30 June of the current financial year.

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

Ratepayers who are not able to enter into an arrangement that would clear the outstanding Rates and Charges within (12) twelve months should be referred to the Financial Hardship section of this 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 (3) months to allow the Ratepayer 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 in a Payment Arrangement. Customers are required to sign and return the completed Payment Arrangement. This formalises the agreement and will commit the ratepayer to the agreed payment schedule.

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

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 Act.

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

#### **7.4 Recovery of Debts**

Legal costs and expenses incurred in the recovery of Rates and Charges will, when allowed, be raised as a charge on the assessment and will be payable by the ratepayer.

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.

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.

#### **7.5 Sale of Land for Unpaid Rates and Charges**

Council may proceed to sell the land in accordance with chapter 17, part 2, division 5, section 713 of the Act, where vacant land has remained outstanding for more than one (1) year or more than five (5) years for any other land.

This is generally the last resort that Council takes in recovering the outstanding Rates and Charges on a property and only if:

- Reasonable attempts have been made to locate the owner of the land where the current address is unknown.

- Debt recovery actions have been undertaken by Council and the Rates and Charges remain outstanding.

If the sale amount is less than the outstanding Rates and Charges, Council will consider the debt to be paid in full in accordance with section 719 of the Act, and will write-off the remaining outstanding balance.

In accordance with section 720 of the Act, any balance of the purchase money must be paid into the Council's trust fund and held by the Council in trust for the persons having estates or interests in the land immediately before the sale according to their respective estates and interests. Council may pay the balance of the purchase money or any part of the balance to or among the persons who are, in its opinion, clearly entitled to it, and the receipt of the person to whom any payment is so made is an effectual discharge to the Council for it.

## **8. Hardship**

Council will consider applicants for financial hardship on an individual basis.

Council will consider applications for hardship where the rateable property is the principal place of residence or where the property owned is by an aged pensioner and is vacant whilst the ratepayer is in short term care.

A ratepayer or other debtor may be eligible for consideration for hardship assistance when the ratepayer is unable to pay Rates and Charges when due and payable for reasons beyond the ratepayer's control.

As part of the application for hardship, the ratepayer must confirm the nature of the hardship and the estimated time the hardship will be experienced.

### **8.1 Legislative Options/Hardship Provisions**

The Act provides Council with the following options to assist ratepayers with financial hardship:

- Agreement as to periodic payment of Rates and Charges (section 564).
- Writing off or reducing interest accrued on Rates and Charges (sections 564, 567).
- Extension of Pension Concession to avoid hardship (section 577).
- Writing off or reducing rates, charges and interest of eligible Pensioners (sections 575, 582).
- Waiving, reducing or deferring the payment of the increase in rates because of hardship resulting from a general revaluation (section 601).
- Waiving or reducing Council fees (section 610E).

### **8.2 Identifying Financial Hardship**

For the purposes of this policy a ratepayer experiencing financial hardship is defined to be a resident ratepayer who wishes to pay their rate instalments as they fall due but does not have the financial capacity to do so and payment when due would cause the person financial hardship. The ratepayer must demonstrate a willingness to pay by maintaining contact with relevant Council staff regarding their circumstances and by agreeing to a payment arrangement plan.

In determining eligibility Council may require a request in writing including a statement of reasons, reasonable proof of financial hardship, details of assets, income and living expenses, and such other information required to make a valid assessment. Council may require the completion of a Hardship Relief Application form and may also request the

ratepayer attend an interview to assist Council in the understanding of the issues causing hardship.

Supporting documentation may include evidence from third parties such as an accountant, evidence from a recognised financial counsellor such as a member of the Financial Counsellor's Association of NSW, a Statutory Declaration from a person familiar with the ratepayer's circumstances who is qualified to provide Council with a clear unbiased assessment of the ratepayer's financial hardship status such as a carer or power of attorney.

### **8.3 Hardship Provisions**

#### **Section 564 – Arrangements as to Periodical Payment of Rates and Charges**

Section 564 of the Act provides that Council may enter into a formal agreement with a ratepayer for alternative periodical payments for due and payable rates.

Where ratepayers are experiencing financial difficulties in meeting their rate commitments, they are requested to make early contact with Council Officers to make a payment arrangement to pay off their outstanding rates by regular payments, subject to the following guidelines:

- The amount and frequency of the payments under the payment arrangement are to be acceptable to Council.
- Payment arrangements should, where possible, seek to have the outstanding rates cleared by the end of the current financial year.
- Where payment arrangements will not pay the Rates and Charges in full by 30 June, the arrangement should, where possible, pay the outstanding amount, and future instalments (including water consumption where applicable) within twelve (12) months.

It will remain the responsibility of the ratepayer or other debtor to communicate with Council, particularly if there are circumstances that may result in the ratepayer being unable to meet the terms and conditions of the payment arrangement. Council will consider such circumstances on their merit and negotiate alternative payment arrangements if required. Failure to meet the payment arrangement schedule without approval from Council will result in the payment arrangement being cancelled and legal action being commenced.

#### **Section 567 – Writing off of Accrued Interest**

Council currently applies interest rates to the maximum allowable under section 566 of the Act. However, Council may write off accrued interest on Rates and Charges payable by a person under section 567 of the Act, if:

- The person was unable to pay the rates or charges when they became due and payable for reasons beyond the person's control; or
- The person is unable to pay the accrued interest for reasons beyond the person's control; or
- Payment of the accrued interest would cause the person hardship.

Ratepayers requesting that interest charges are written off for one or more of the above reasons need to submit a letter providing details as to why they were unable to pay the instalment by the due date, or why the payment of the accrued interest would cause hardship. Each individual case will be considered by Council and decided on its particular merits against the criteria of section 567.

Council may consider writing off interest where the ratepayer is experiencing genuine financial hardship and the ratepayer has complied with all criteria with respect to a

section 564 periodic payment arrangement. Council may request the completion of the Hardship Relief Application form.

The General Manager is authorised to write off accrued interest and/or costs in accordance with the above criteria when this forms part of the General Manager's Delegations.

### **Section 582 – Abandonment of Pensioner's Rates and Charges**

The maximum statutory pension concession provided to eligible pensioners under section 575 of the Act is fifty percent of the total ordinary Rates and Charges up to \$250.00 maximum and \$87.50 each of water and sewer charges.

Section 582 of the Act states a council may waive or reduce rates, charges and interest due by any person prescribed by the regulations who is in receipt of a pension, benefit or allowance under the *Social Security Act 1991* of the Commonwealth.

### **Section 601 – Hardship Resulting from Certain Valuation Changes**

Section 601 of the Act provides that where any ratepayer who suffers substantial hardship as the consequence of the making and levying of a rate following a new valuation, may apply to Council for rate relief.

In order for Council to consider an application for relief under section 601 the following conditions must be met:

- The property must be categorised as "Residential" and be the ratepayer's principal place of residence and be the only property in which the applicant has an interest. The increase in rates must be greater than the general/special variation % increase applied for the rating year in which the new land valuation comes into effect.
- The net ordinary rates payable must be more than 5% of annual gross household income.
- The applicant would suffer substantial hardship if required to pay the Rates and Charges when they fall due. Applicants will be required to complete a "Hardship Relief Application Form".
- The application must be made within six (6) months of Council issuing a Rates and Charges Notice based on the new land valuation. Assistance is only available in the first year the new valuation is used to levy rates.
- If eligible, Council will defer payment of the amount above the ordinary rate payable on the property for the previous year with the adopted rate percentage increase applied. The payment of this amount will be deferred to the following rating year. One quarter of the amount of the increase will be added to each of the quarterly instalments due in the following rating year. Interest will not be charged on the deferred amount unless it remains unpaid after the instalment due date to which it was applied.

### **Section 610(E) – Hardship Assistance in Relation to Council Fees**

The General Manager may have the delegated authority, when this forms part of the General Manager's Delegations, to make such decisions in relation to the waiving or reducing of fees.

Any application for hardship assistance in relation to Council fees or charges, other than annual charges, by waiving or reducing fees under section 610(E) of the Act, will be assessed in accordance with the same eligibility criteria used to assess hardship assistance in respect to rates and annual charges.

## **9. Assessment of Hardship Applications and Arrangements**

### **9.1 Payment Arrangements**

Delegated Officers of Council may consider and enter into payment arrangements with ratepayers on behalf of Council.

It is the responsibility of the customers who have entered into a payment arrangement with Council to advise Council if they cannot adhere to the payment arrangement.

Finance staff will review all Hardship Relief applications received by Council and make recommendations to the General Manager through Director of Corporate and Community Services where required in accordance with this policy.

A determination under this policy will be assessed against financial data provided by the applicant.

Each application will be considered on a case by case basis on its merits with consideration being given to the following:

- The financial status of the ratepayer;
- Income from all sources;
- Living expenses;
- Reasons for Financial Hardship;
- Health of the ratepayer and dependants that reside with the applicant;
- Length of ownership of the property;
- Prior history with Council in respect to the payment of Rates and Charges;
- Compliance with any previous periodic payment arrangements;
- The implication to Council in deferring or writing off interest charged;
- The implication to Council in deferring or writing off Rates and Charges (i.e. pension rebates).

The ratepayer will be informed of the General Manager's decision in writing.

### **9.2 Continuing Hardship**

If the ratepayer continues to experience hardship after the concession period approved by Council has expired, the ratepayer will need to reapply providing an updated "Hardship Relief Application form" for assessment. In such circumstances Council may require up-to-date personal and financial information to confirm the ratepayers continued financial hardship.

### **9.3 Failure to Maintain the Payment Schedule or Other Concession Options**

At all times, the ratepayer must communicate with Council, particularly if there are circumstances that may result in the ratepayer being unable to meet the terms and conditions of the concession option. Council will consider such circumstances on merit and negotiate alternative payment arrangements with the ratepayer if required.

Failure to notify Council of the above, or general failure to meet the payment arrangement schedule, may result in Council seeking full recovery of the rates and/or charges through the initiation of legal action.

Council may at its discretion withdraw any hardship concession.

## **10. Sundry Debtor Accounts**

Council reserves the right not to extend credit and require payment in advance of any service supplied. Sundry debtor accounts are 30 days, statements are issued within



seven (7) days of months' end. Sundry debtor accounts not paid by the due date are considered outstanding.

Council reserves the right to amend terms of trade for sundry debtor accounts from time to time.

### **10.1 Recovery of Sundry Debtor Debts**

Council may take recovery action of an overdue sundry debtor account within thirty (30) days of the account becoming overdue unless the debtor enters and complies with a direct debit or payment arrangement.

Council will not take recovery action for an overdue sundry debtor account when a debtor enters and complies with a direct debit or payment arrangement.

Council's direct debit or payment arrangement with sundry debtors will not exceed six (6) months. Council may extend the six (6) month limit if they believe exceptional circumstances exist.

In cases of not-for-profit organisations, charities, vulnerable community members and unincorporated community groups, the Director of Corporate and Community Services retains discretion in relation to the manner of which outstanding debts are recovered.

Council will not consider hardship applications in relation to animal registration fees and swimming pool season tickets.

### **10.2 Debt Recovery/Legal Proceedings of Sundry Debtor Accounts**

Where an amount is overdue for more than thirty (30) days, the sundry debtor account may be placed on stop credit. Council reserves the right not to extend credit and require payment in advance of any service supplied.

Recovery action will commence with a Reminder Notice being issued by Council to the sundry debtor whose outstanding sundry debtor account is outstanding for more than thirty (30) days.

If the sundry debtor account remains outstanding for thirty (30) days after the Reminder Notice due date, and no payment arrangement has been agreed, Council may commence debt recovery proceedings.

Council will issue a Letter of Demand advising that if payment is not paid in full or a mutually suitable payment arrangement entered into within fourteen (14) days, then recovery action involving legal costs will commence on balances over \$500.

If payment is not made in full or a mutually suitable payment arrangement agreed by the due date of the Letter of Demand, then recovery of outstanding sundry debtor accounts will follow the same procedure as outlined for outstanding Rates and Charges.

Legal fees and expenses associated with debt recovery proceedings will be pursued through the legal proceedings.

### **10.3 Write Off of Outstanding Sundry Debtor Accounts**

A sundry debtor account can be deemed uneconomical to recover due to but not limited to:

- Bankruptcy,
- Deregistered company,

- Balances lower than the legal fees to recover.

All sundry debtor accounts deemed to be unrecoverable by the Director of Corporate and Community Services, on the advice of Finance staff, will be recommended to be written off. All such write offs will be reported to the General Manger annually at the completion of the financial year. The General Manager is authorised to write off sundry debtor accounts when this forms part of the General Manager's Delegations.

Debts to be written off are reported to Council for endorsement.

#### **11. Contacting Ratepayers**

Council will be guided by the Office of Local Government Debt Management and Hardship Guidelines best practice procedures for contacting ratepayers regarding outstanding Rates and Charges.

Whilst Council will endeavour to contact ratepayers regarding outstanding Rates and Charges prior to escalating recovery action, it is the responsibility of ratepayers to ensure Council's contact details including the postal address for service of notices are correct.

#### **12. Counselling, Mediation and Informal Dispute Resolution**

Where a ratepayer or debtor owes a debt to Council and disputes the amount levied or outstanding, the customer is required to put the dispute in writing, stating reasons they believe the account to be incorrect. Council will investigate the complaint to determine if the dispute can be resolved informally and shall respond to the dispute in writing in a timely manner.

If a ratepayer has made an application for financial hardship that has not yet been determined, or is complying with a payment arrangement made with Council in good faith, debt recovery proceedings will be suspended.

Ratepayers are encouraged to access support services to help resolve legal or financial issues and/or negotiate arrangements to manage debt. Community legal centres and financial counsellors provide a mix of social, financial and paralegal advice and advocacy on debt issues.

### 13. Responsibilities

#### General Manager

- Shall ensure the development of Debt Recovery and Financial Hardship Guidelines and Procedures that conforms to Council's Policy.
- Shall monitor the effectiveness of the of Debt Recovery and Financial Hardship Guidelines and Procedures that conforms to Council's Policy.

#### Staff

- Shall implement and carry out the actions listed in the Policy, Guidelines and Procedures.

### 14. Getting Help

The staff member/s who can assist with enquiries about the policy:

Position: Chief Financial Officer

Department: Corporate and Community Services

### 15. Version Control

Review Date: This Policy has a life of two (2) years. It will be reviewed by November 2024.

Staff Member Responsible for Review: Director Corporate and Community Services.

Policy Name	Action	Resolution No.	Date
Debt Recovery and Financial Hardship Policy	Endorsed	51/2021	20/08/2020
<a href="#">Debt Recovery and Financial Hardship Policy</a>	Reviewed		26 October 2022