



DEBT RECOVERY MANAGEMENT POLICY

Corporate Document

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Purpose

To fulfil the statutory requirements of the *Local Government Act 1993* (the Act) with respect to the recovery of outstanding Rates, Annual Charges and Interest and the recovery of outstanding Sundry Debts.

To establish a framework for staff to ensure a consistent approach to Mosman Council's debt management and collection practices through clear guidelines to staff.

Objectives

The objectives of this policy are to:

- be empathetic to ratepayers and sundry debtors that can demonstrate genuine financial hardship
- work within the statutory requirements of the *Local Government Act 1993*, Local Government (General) Regulation 2005, in relation to the recovery of rates and annual charges and miscellaneous sundry debts
- to meet, or exceed, the debt recovery financial benchmarks set by the NSW Office of Local Government

Scope

This Policy applies to:

1. Ratepayers and Sundry Debtors with overdue balances
2. Council staff that have delegated authority to action applications for concessions and to recover outstanding debts

Definitions

- **Rates and charges** – all balances listed on a rates and annual charges notice or legal notice
- **Miscellaneous sundry debts** – non rates and charges debts listed in Council's accounts receivable ledger and/ or supplementary management systems (such as ProgeNet)
- **Financial Hardship** – demonstrable personal circumstances that indicate an inability to pay as a result of circumstances beyond an individual's control
- **Debt Recovery Procedure** – procedure to follow in order to meet the objectives of this policy
- **Interest** – a charge raised in relation to unpaid rates and charges in accordance with s566 of the *Local Government Act 1993* or in relation to sundry debtors in accordance with the terms of agreement.

Background

Council acknowledges that ratepayers and debtors to Council will, for various reasons from time to time, fail to pay their debts when they become due and payable to Council. It is not the intention to cause undue hardship to any external stakeholder through Council's recovery procedures which are aimed in cases of genuine financial hardship to ensure respect and compassion. In these cases consideration will be given to acceptable arrangements to clear the debt prior to the end of

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the current financial year, adopting the principles of fairness, integrity, confidentiality and compliance with statutory requirements. It applies to all applications for alternative payment arrangements.

The General Manager has delegated authority to:

- approve or reject payment arrangement plans from any customer after receiving a written request
- proceed with legal action to recover outstanding rates and charges where an arrangement plan has defaulted or if the ratepayer has failed and/or neglected to pay one or more instalments or a suitable attempt has not been made to clear the outstanding balance within a time specified as reasonable by Council
- assess applications due to hardship and payment arrangement plans from any customer after receiving a formal application for hardship assistance

Debt Recovery Standards

Council has a responsibility to recover monies owing to it in a timely, efficient and effective manner to finance its operations and ensure effective financial management.

Council aims to ensure effective control over debts owed to Council, including overdue rates, charges and interest and to establish debt management procedures for the efficient collection of receivables and the recovery of outstanding debts including deferment and alternative payment arrangements.

The other key principles that will apply to the collection of overdue rates and charges are as follows:

- a) Council's aim is to collect all rates and charges by the end of each financial year
- b) A fair and reasonable approach to recovery will apply
- c) Council will individually assess cases of financial hardship
- d) Council will not reduce rates or charges, but will consider alternative approaches to dealing with cases of financial hardship
- e) Council will consider periodical payment arrangements in cases of hardship or extenuating circumstances
- f) Council will utilise the services of Mercantile Agents where required
- g) Council will aim to keep its Rates and Charges Ratio at or exceed industry best practice. It will however not pursue through legal action the collection of outstanding Rates and Charges from pensioners
- h) Council will apply the provisions of the Act relating to the sale of land to recover overdue Rates, and Charges and Interest when appropriate
- i) Council will have regard to the impact on the community arising from any disruption to service provisions delivered by sundry debtors

Debt Recovery

Rates and Charges

Recovery of rates and charges is to be conducted according to the following:

- a) All owners are to be issued with an Annual Rates Notice in accordance with Section 546 of the *Local Government Act 1993* and, where required, Rates Instalment Notices are issued in accordance with Section 562 of the Act
- b) The Rates Instalment Notice is to include any amount that is overdue. This amount is to be shown separately and identified as being overdue and subject to interest charges
- c) An Instalment Reminder Notice will be issued to all owners who have not paid the instalment due amount in full, 14 days after the due date
- d) Interest charges are to accrue on overdue Rates and Annual Charges on a daily basis in accordance with Section 566 of the Act
- e) Where an owner has rates and charges that are overdue (excluding pensioners under Deferred Rates and Charges agreement), Council will issue a Final Notice requiring payment or a mutually agreeable payment arrangement of the overdue amounts within 14 days from the date of the letter
- f) If rates and charges remain unpaid after the expiry of the Final Notice due date, Council will instruct its Mercantile Agent to forward a letter of demand allowing for seven days payment prior to instigation of legal action. Generally legal action starts with a Statement of Claim, and where necessary, is followed by Judgment then a Writ of Execution or Garnishee Order, and/or other enforcement procedures as required

If no payment is received or no arrangement made following the issue of the Notice of Intent, a Statement of Claim will be prepared, issued and served by Council's Mercantile Agent. Following expiration of the statutory period, to protect Council's interest in the matter and all available actions to recover the amount outstanding, if the debt is not cleared, a Notice of Motion Default Judgment will be lodged.

Recovery action by Council or it's agent to recover outstanding debts that will be considered include, but are not limited to a garnishee of income; a writ of execution on goods and chattels, an examinations summons, a service or a rent order where the property is tenanted and/or other enforcement procedures as required.

- g) In accordance with Section 459 of the *Corporations Act 2001*, where the ratepayer is a company and has been served with a creditors statutory demand (Section 459E of the *Corporations Act 2001*) and the ratepayer has not complied within the 21 day period, Council has the right to commence proceedings to have the debtor company wound up and a liquidator appointed. All debts relating to the issue of a creditors' statutory demand must exceed the sum of \$2,000
- h) All legal costs and expenses incurred in recovering outstanding rates and charges shall be charged against the property in accordance with Section 605 of the Act
- i) Arrangements for payment may be accepted after legal action has commenced, subject to the continuation of legal action should the ratepayer not adhere to the approved arrangement
- j) As a result of Council entering judgment, debtors will automatically be listed on the Credit Reference Listing by credit listing bodies

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- k) Where legal action is unsuccessful and Rates and Annual Charges remain overdue for more than 5 years the property is to be sold by public auction in accordance with Section 713 of the Act, subject to a resolution of Council

Miscellaneous Sundry Debts

Recovery of sundry debts is to be conducted according to the following:

- a) Monthly accounts with balances are forwarded to Sundry Debtors for payment. Where available management systems will push email and / or SMS notifications to debtors with a balance after the due date.
- b) Debtors that have debts over 60 days are contacted by phone or email to discuss the outstanding amount. If payment is not made within 24 hours of the phone call or email or if unable to be contacted a final notice requesting payment within 14 days is issued.
- c) Debts that are over \$400 and remain unpaid after the expiry of the due date of the final notice, will, unless special arrangements are made, be referred to Council's Mercantile Agent for collection. All legal costs associated with the recovery will be passed onto the debtor when legally able to do so.
- d) In respect of debtors who have unpaid fees for footpath occupations they may also be subject to the issue of an infringement for unauthorised occupation of the footpath.

Related Information/Glossary

- *NSW Local Government Act 1993*
- Local Government (General) Regulation 2005
- *Social Security Act 1991*
- *Veterans' Entitlement Act 1986*
- *Privacy and Personal Information Protection Act 1998*
- *Government Information (Public Access) Act 2009*
- *Health Records and Information Privacy Act 2002*
- Mosman Council's Privacy Management Plan 2011
- *Civil Procedures Act 2005*
- *Corporations Act 2001*
- Office of Local Government – Council Rating and Revenue Raising Manual
- Rates and Charges Hardship Policy

Review

This policy will be reviewed every four years unless otherwise directed by the Executive Team.

Contact

Enquiries should be directed to the Chief Financial Officer on 9978 4011.

Amendments

Date	Amendment	Reference