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Debt Management and Hardship Policy

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1. Purpose

Council rates and charges fund a vast array of services, infrastructure and facilities for the local community. This policy is to establish guidelines for:

- Effective and efficient control over debts owed to Council
- Promotion of a respectful, fair and equitable approach to debt recovery
- Fulfilment of the statutory requirements of the Local Government Act 1993 and associated Local Government Regulations with respect to the recovery of rates, charges and other debts.

2. Background

The Local Government Act provides the legal framework for how Council sets and levies rates and charges each year and recovers debt from overdue rates and charges, including for waiving or reducing rates in cases of hardship. Council takes into account guidelines under Section 23A of the Local Government Act 1993 on Debt Management and Hardship in forming this policy.

3. Ensuring prompt payment

Council is committed to implementing measures to assist ratepayers and debtors to pay debts promptly. These measures include:

- a. Allowing flexible payment arrangements before rates are due, such as periodic weekly, fortnightly, monthly payments
- b. Providing a range of electronic payment options
- c. Delegating appropriate staff with the ability to enter into suitable payment arrangements
- d. Ensuring staff understand financial counselling and low-cost support services that are available for ratepayers to be referred to
- e. Providing important information with rates notices on payment options and where to go for further information
- f. Funding the local government share of the annual pensioner concession

4. Recovering debts fairly and effectively

Council acknowledges that from time to time some ratepayers will face difficulties paying fees and charges and is committed to taking a fair and flexible approach to managing their debts.

In the first instance this policy seeks to recover outstanding payments using a process that promptly determines how each debt will be paid outside a formal court process.

When rates, fees and charges are not paid by the due date, Council will issue reminder notices for levied rates, water and sewerage charges and for sundry debtors, will issue accounts statement to notify amount outstanding.

Under Section 564 of the Local Government Act 1993, agreement to periodical payment plan may be entered to manage outstanding debt. All arrangements to pay outstanding water accounts must be made with the owner of the property. No arrangement for payment may be made with a tenant of the property, unless they are the designated rate-paying lessee.

The payment of debts by arrangements shall not remove the right of Council to recover current and future charges. If the arrangement is in arrears for a period of more than 14 days and the debtor has not make any contacted will be deemed as in breach of the Section 564 payment plan agreement.

Further action will be taken against defaulted debtor without further notice by direct referral to Council's debt collection agency. If this fails, Council will pursue legal action guided by the Local Government Act 1993 and may include sale of land for overdue rates under Section 713 of the Act.

5. Hardship Arrangements

5.1 Identifying hardship

Council acknowledges there are times when a person faces difficulty in paying a debt when repayment is due. Debtors are encouraged to seek assistance from Council as soon as practical and Council will consider each case on its merits. Short-term hardship can arise from temporary changes in circumstances due to:

- Loss or change in income
- Illness
- Loss arising from an accident
- Natural disaster or emergency situation
- Death in the family
- Separation, divorce or other family crisis
- Family Violence, and/or
- Some other temporary financial difficulty due to loss of income or increase in essential expenditure.

Long-term hardship can arise from any if the reason listed or it can relate to the problem of managing living costs with low or fixed income such as a pension or superannuation payment.

Unreasonable causes for financial difficulty or hardship, which may not be grounds for assistance:

- Over commitment
- Long term/permanent cash flow problems caused by own decisions
- Imprisonment or payment of statutory fines
- Long term failure to pay rates.

5.2 Methodology for assessing hardship

When assessing hardship, the factors considered may include but are not limited to whether the debtor:

- Has provided appropriate evidence of financial and/or other hardship
- Receives Centrelink benefits
- Receives other benefits (e.g. emergency relief funding)
- Could be considered in acute financial hardship, for example, if an individual earns below 75% of the minimum weekly wage
- Is experiencing domestic or financial abuse
- Has been referred by an accredited financial councillor, welfare agency or legal assistance service
- Has a payment history that indicates that they have had difficulty in meeting payments in the past.

The debtor can submit applications or by another person on their behalf provided, they have evidence of authority to do so from the debtor.

Hardship arrangement for outstanding levied rates, sewerage and water charges can only be applied for the primary place of residence and requires that the property is the sole and only property.

Council does not accept hardship applications on business properties.

5.3 Options for those in hardship

5.3.1 Short Term Payment Plans

Council will work with a debtor to agree a realistic short term payment plan arrangement and take into account the capacity to pay with consideration of:

- Total disposable income
- Current financial commitments
- Number of dependants

Short-term assistance may be provided subject to the following:

- Applicant must apply in writing or verbally
- Adhere to proposed regular payments
- Maximum life of the arrangement is 6 months
- Default in arrangement will result in further legal action
- Interest will be levied as determined under the Local Government Act
- Renewed application upon expiry of arrangement

For pensioners, Council will freeze interest on outstanding debt and will not be subject to sale of property for overdue rates. An eligible pensioner as defined in clause 134 of the Local Government (General) Regulations 2021.

5.3.2 Long Term Payment Plans

Council will work with a debtor to agree a realistic longer term payment plan arrangement and take into account the capacity to pay with consideration of:

- Total disposable income
- Current financial commitments
- Number of dependants

Long-term assistance may be provided subject to the following:

- The applicant must own the property and it be their primary place of residence
- Applicant must complete a signed application
- Be willing to attend a possible interview
- Be willing to provide a Statement of financial position
- Adhere to proposed regular payments
- Maximum life of arrangement is 12 months
- Default in arrangement will result in further legal action
- Interest will be levied as determined under the Local Government Act
- Applicant is to reapply each year

For pensioners, Council will freeze interest on outstanding debt and will not be subject to sale of property for overdue rates. An eligible pensioner as defined in clause 134 of the Local Government (General) Regulations 2021.

5.3.3 Rates Assistance Program

Council intends to partner with local welfare and/or financial counselling services to act as a referral point for ratepayers experiencing financial hardship. Participating services will be empowered to assess ratepayer's individual financial circumstances and recommend to Council that rates and charges up to \$300 be written off due to financial hardship. Each participating service would be given an annual limit of \$5,000 that they can recommend for financial assistance. It is proposed that \$300 assistance is available to individual non-pensioner rate assessments per annum and \$150 is available to individual pensioner rate assessments per annum (in addition to the pensioner rate concession) to assist ratepayers who are experiencing financial hardship and difficulty paying rates.

Participating services are to contact Council to recommend assistance. Council will check the ratepayer's property ownership and pensioner rate concession status and provide confirmation of the maximum eligible amount to the participating service. A credit will then be processed to the ratepayer's rate assessment. A record of all assistance is kept. Assistance is provided in the order that recommendations are received by Council.

The rates assistance program will be included in Council's Revenue Policy annually and publicly exhibited as a proposed donation for a class of individuals under section 356 of the Local Government Act 1993 and the aggregated cost included in the annual report.

Prior to finalisation of arrangements with local financial counselling services please refer requests to Council's rates team.

5.4 Application decisions and avenues of appeal

The ratepayer or debtor shall be advised of a decision within 14 days of application.

When a payment plan is agreed the applicant will be given written notice of:

- How long the plan will last
- Amount of each instalment payable
- The due date of each instalment
- What action Council will take if the applicant misses a payment
- Who to contact if the applicant's circumstances change.

The applicant shall have a right of appeal – usually the elected Council – and must be made within 14 days of notification.

5.5 Cancelling of hardship arrangements

A hardship arrangement may be cancelled by either party if the debtor:

- Fails to comply with their agreed payment plan
- Advises Council that the financial hardship no longer applies
- Provides false or misleading evidence of financial hardship to Council.
- No longer owns the land.

6. Payment deferral of rates and charges – aged pensioners

Aged pensioners who satisfy the eligibility criteria may make application to defer the payment of rates and charges and property related sundry debtor accounts against their estate. If granted, payment of the rates, charges, interest and property related sundry debts will be deferred until any of the following occurs:

- a) Death of the ratepayer.
- b) Sale of the property.
- c) The ratepayer ceases to occupy the property as their principal place of living and rents the property out.

6.1 Eligibility

The criteria used to determine eligibility for deferral will be:

- a) The ratepayer must be an aged pensioner as defined by Centrelink in receipt of a pensioner rate concession in relation to the property.
- b) The property must be the ratepayer's principal place of living.
- c) The property must be used for residential or farming purposes only.
- d) The property can have no more than a single dwelling house or residential unit erected upon it.
- e) The total annual amount of rates and charges (net of pensioner concession) payable must be more than 7% of the age pension of an individual (if the ratepayer is an individual) or 7% of the age pension of a couple (if the ratepayer is a couple) at the date of the initial application.

6.2 Application process

An initial application form must be completed and lodged with Council and determined by the Revenue Officer. A ratepayer dissatisfied with a decision of the Revenue Officer may have that decision reviewed by the Review Panel established under this policy. The Review Panel may approve an application for deferral if it believes the circumstances of the ratepayer warrant this even if the eligibility criteria have not been met. A letter of determination will be issued to the ratepayer. If an application is refused, the ratepayer will be provided with reasons for the refusal.

6.3 Rates deferral arrangements

After approval, a letter will be posted out annually to the ratepayer with a copy to sign and return to continue the deferral. The purpose of the annual letter will be to confirm that the ratepayer continues to own and occupy the property, is still alive, and is aware of and agrees to the deferral. Deferral will continue once granted without the need to satisfy the 7% criteria again, provided that the ratepayer continues to own and occupy the property. Where the ratepayer ceases to occupy the rateable property and the property becomes rented a repayment timeframe for the deferred rates and charges will be negotiated by the Revenue Officer. A person dissatisfied with a decision of the Revenue Officer may have that decision reviewed by the Manager Finance.

Interest charges accrue in respect of deferred rates and charges at the rate determined under the Local Government Act. No deferred rates, charges or interest will be written off under this policy.

6.4 Cancellation of rates deferral arrangements

A rates deferral arrangement may be cancelled by either party if the debtor:

- Fails to comply with their agreed payment plan
- Advises Council that the financial hardship no longer applies
- Provides false or misleading evidence of financial hardship to Council.
- No longer owns the land.

7. Writing off of accrued interest

Under Section 564 and 567 of Local Government Act 1993, accrued interest on overdue rates and charges may be written off where payment of the interest would cause the debtors financial hardship.

Ratepayers seeking to have interest on overdue rates and charges written off under hardship provisions must submit a hardship application form for the consideration of the Council. Write-offs will only be considered where the ratepayer has entered into payment plan arrangement and has not defaulted.

The delegated Council staff shall make the determination of application.

8. Writing off of debt

If a debt is unrecoverable, or Council chooses not to take any further action, outstanding debt may be reduced or write-off as per regulation:

- Rates and charges in certain circumstances under clause 131 Local Government (General) Regulation 2021
- Pensioners' rates and charges under Section 582 and 583 Local Government Act 1993, and
- Sundry fees and charges under Section 610E Local Government Act 1993

The Council can only write off outstanding debts through Council resolution.

Under clause 131 Local Government (General) Regulation 2021, the write off of rates and charges does not prevent Council from taking legal proceedings to recover the amount.

9. Dealing with Exceptional Circumstances

Council may be affected by circumstances that are outside the bounds of normality, such as pandemics and natural disasters. These circumstances may result in overbearing and long lasting impacts on the normal functioning of both the community and Council.

Throughout such times, Council may deem that it is necessary to diverge from this policy if the impact of the event is such that it warrants a more expansive application of hardship relief, as the result of increased hardship experienced by members of the community.

Such changes to the application of the existing policy may be the result of Federal or NSW Government Legislation changes or directives as issued to Council.

Council may also enact necessary changes to the existing policy to cater for any substantial increases in hardship relief applications. Where necessary to cater for such increases the changes may need to be introduced without such changes being placed before a Council meeting for adoption provided the changes are permitted under the current legislation.

It is Important to note throughout any such period of exceptional circumstance the existing policy is the overriding document Council will rely upon when determining if hardship relief should be granted.

Any changes made to the existing policy to cater for exceptional circumstance shall be applicable only for the ensuing time where the direct effect of the event is still applicable.

10. Legislative requirements

Local Government Act 1993

Local Government (General) Regulations 2021

Privacy and Personal information Protection Act 1998

11. References

NSW Office of Local Government's Debt Management and Hardship guidelines (November 2018)

Port Stephens Debt Recovery and Hardship Policy

12. Associated Documents

Delegation Policy - GM to Staff (available on intranet)

Revenue Policy

13. Policy History

Version	Date	Changes / Amendments
1.0	29/11/2022	Adopted by Council (Resolution 389/2022FC)
1.1	25/06/2024	Additional hardship provisions included: <ul style="list-style-type: none">• Ability for aged pensioners to defer payment of rates to their estate• New Rates Assistance Program providing up to \$300 financial relief Adopted in principle for public exhibition (Resolution 167/2024FC)

14. Reviews

This policy will be reviewed every two years.

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