

TEMORA SHIRE COUNCIL



TEMORA
The Friendly Shire

DEBT RECOVERY

ACTIVE

Review Details

ABOUT THIS RELEASE

DOCUMENT NAME: Debt Recovery
CODE NUMBER: F2
AUTHOR: Temora Shire Council
ENDORSEMENT DATE: 19 July 2018

REVIEW

Revision Date	Revision Description		Date approved by Council	General Manager's Endorsement
December 2017	New Procedures	1		
July 2018	Revision	2	19 July 2018	Gary Lavelle
October 2022	Revision	3	20 October 2022	Gary Lavelle

PLANNED REVIEW

Planned Review Date	Revision Description		Review by
2024	Revision		Director of Administration & Finance

Objectives

- To ensure consistency, fairness, integrity and confidentiality of all proceedings for both the Council and the debtor.
- To fulfill the statutory requirements of the Local Government Act, 1993 with respect to the recovery of rates, charges and other debts.
- To maximise collections of outstanding debts and to optimise Council's cash flow.
- To be sympathetic and helpful to ratepayers and other debtors suffering genuine financial hardship.

1. Procedures – Rates & Annual Charges Notice

1.1 Rates & Annual Charges Notice

- 1.1.1 Rates Notices are issued in July each year and Instalment Reminder Notices issued quarterly in accordance with section 562 of the Local Government Act 1993. A notice is issued 30 days before each instalment due date.
- 1.1.2 Rates & Charges are payable in four instalments and are due on the last day of August, November, February & May.

1.2 Interest

- 1.2.1 Interest accrues on a daily basis in accordance with Section 566 of the Local Government Act 1993 (The Act) on rates and charges that remain unpaid after they become due and payable. The rate to be charged is the maximum allowed as announced by the Minister by Notice published in the Gazette each year.

1.3 Reminder Letters & Final Notices

- 1.3.1 A “Reminder Letter” is to be issued to all ratepayers who have rates and/or charges outstanding over the amount of \$100 or the balance due is in excess of two instalments, within thirty days after the end of the second and fourth quarters.
- 1.3.2 The Reminder Letter will include the following information:
- The amount of the overdue rates and charges;
 - Advise that interest is charged on the overdue amount and state the interest rate;
 - Ask that the ratepayer contact the rates department to make alternative arrangements to pay the overdue amount if they are not in a position to pay all of the overdue amount.
 - Advise that if payment is not received by the nominated date, recovery action may commence with no further notice.
- 1.3.3 If a “Reminder Letter” does not result in payment in full or suitable payment arrangements being made within fourteen days of the date of the letter, a “Final Notice” is issued.
- 1.3.4 The Final Notice will include all the information included on the Reminder Letter above as well as:
- Advise that all legal and collection costs paid by the Council to the Collection Agency and other associated costs are to be added to the outstanding amount and indicate the amount of these charges.

1.4 Recovery Action

- 1.4.1 If no arrangements are made within fourteen days of the Final Notice being issued, and the outstanding balance is \$1,000 or more, authorisation should be sought from the Director of Administration & Finance for the account to be referred to a collection agency for recovery.
- 1.4.2 Any or all of the following steps may be taken to recover the debt:
- Letter of Demand
 - Summons (Statement of Liquidated Claim)
 - Default Judgment
 - Rent for Rates
 - Garnishee – Bank Account or wage
 - Examination Notice
 - Examination Order
 - Writ of Execution
 - Mortgage Letter
 - Notice under Section 364 to wind up a company
 - Sale of Land for Unpaid Rates & Charges
- 1.4.3 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 Local Government Act 1993.

1.5 Arrangements

- 1.5.1 Council is empowered under Section 564 of the Act to enter into an agreement with a person to accept periodical payments of rates and charges due and payable. All requests for payment arrangements must be in writing on the approved form, except where the negotiated arrangement is for payment to be paid within thirty days.
- 1.5.2 All arrangements entered into via an Arrangements to Pay by Periodic Payments form must be paid as negotiated by BPay for lump sums, Direct Debits or Centrepay. Other forms of payment will only be agreed to in limited circumstances at the discretion of Manager of Administration & Finance.
- 1.5.3 Direct Debits are available fortnightly, monthly, by Instalment or yearly. Centrepay is by pension payment calendar. Direct Debit & Centrepay requests are to be made on the approved form.
- 1.5.4 Arrangements are to be negotiated in accordance with the adopted procedures with the aim of recovering all arrears and the current year's rates and charges within the current rating year, where possible.
- 1.5.5 Arrangements which will clear the arrears and current balance within the current financial year may be approved by the Rates Finance Officer or higher. Requests for arrangements which go beyond the current financial year must be authorised by the Director of Administration and Finance. Regard should be given to all debts owing to Council before making any arrangement.
- 1.5.6 Normal interest charges will apply to arrangements unless interest is to be written off in accordance with the provisions of the Financial Hardship Policy.

- 1.5.7 All arrangements relating to outstanding rates and charges shall be recorded as an arrangement memo on each individual assessment.
- 1.5.8 Where the ratepayer fails to adhere to an agreement, an arrangement default notice will be issued as follows:
- Weekly or fortnightly arrangements – within seven days of the second default;
 - All other arrangements – within seven days of the first default.
- 1.5.9 Where a ratepayer fails to recommence their arrangement within the time specified, recovery action will recommence from the stage which had been reached prior to the last arrangement being negotiated.
- 1.5.10 For ratepayers who have an arrangement to pay by direct debits set up, for each instance of funds returned unpaid, a dishonoured payment fee will be charged to the assessment to cover costs. If three separate instances of returned funds are recorded within a financial year an administration fee on dishonoured payments will be charged to the assessment. Refer to Council's Schedule of Fees and Charges for relevant fees. On the fourth instance of funds returned unpaid the Arrangement to Pay by Periodic Instalments will be considered cancelled and full payment of the outstanding amount is due immediately. Failure to pay will result in Legal Recovery without further notification.

1.6 Hardship

- 1.6.1 Section 567 of the Act empowers Council to write-off accrued interest on rates or charges payable by a person if, in Council's opinion:
- 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.
- 1.6.2 Section 577 of the Act enables Council to make an order deeming certain persons who are jointly liable with an eligible pensioner(s), but who are not themselves eligible, to be eligible pensioners for the purpose of a mandatory reduction. In addition, section 577 enables an eligible pensioner who although not liable or jointly liable to do so, has paid or is likely to pay the whole of the rates or charges for the land, to be or have been eligible.
- 1.6.3 Section 582 of the Act allows Council to 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.
- 1.6.4 Applications for hardship must be received in writing on the Hardship Rate Relief Application Form.
- 1.6.5 Consideration will be given to cases of hardship only on the following grounds:
- Terminal Illness – for ratepayers who are unable to meet payments, consideration will be given to waiving interest on rate accounts. A medical certificate is required.

- Natural Disasters (Bushfire, Flooding, Drought) – for ratepayers who have suffered a natural disaster, consideration will be given to the waiving of interest for a specific period (Full details of losses required); or
- As determined by Council.

1.7 Sale of Land for Unpaid Rates and Charges

- 1.7.1 Where any rate or charge is overdue and has remained unpaid for more than five years from the date on which it became payable, Council may proceed to sell the land in accordance with Division 5 of Part 2 of Chapter 17 of the Local Government Act, 1993.
- 1.7.2 Where any rate or charge is overdue in respect of vacant land, and has remained unpaid for more than one year, and the amount overdue exceeds the Valuer General's current valuation of the property, Council may proceed to sell the land in accordance with Division 5 of Part 2 of Chapter 17 of the Local Government Act, 1993.
- 1.7.3 On an annual basis, outstanding debts are to be reviewed to identify all properties where any rates or charges are overdue and have remained unpaid for the period of times referred to in 1.7.1 & 1.7.2. A title search is to be obtained to establish all owners and interested parties and in accordance with Sec 713(3) the General Manager or Public Officer shall certify the debt in writing.
- 1.7.4 A report shall be referred to Council for consideration listing all ratepayers who are identified in 1.7.3 and requesting a resolution to enable the sale to proceed. The report will provide a detailed history of the circumstances of each case together with a recommendation in relation to the possible sale of the land to recover the overdue rates and charges.
- 1.7.5 Council shall call for expressions of interest from local real estate agents and appoint an agent to conduct the auction. Council's Solicitor shall be advised of the intention to sell the land and be requested to prepare sale contracts and to attend the auction. Completed Section 10.7 Certificate, Sewer Compliance Certificate (where applicable), Drainage Diagram and Section 603 Certificate shall be forwarded to the solicitors for preparation of contracts (Section 603 certificate to be updated at the time of settlement).
- 1.7.6 All owners and interested parties will be notified of Council's intention to sell the property using the last known addresses or information available. A date for the auction shall be set being not more than six months and not less than three months from the publishing of the proposed notice of sale and the venue for the auction selected and booked (eg the Council Chambers or Town Hall).
- 1.7.7 Council shall publish the proposed sale in the local newspaper and the Government Gazette.
- 1.7.8 Assessments must be checked daily as the sale will not take place if full payment is received. An arrangement memo will be attached to the assessment advising of the pending sale and noting that all correspondence must be via the rating Finance Officer.

- 1.7.9 On the day of sale 10% deposit shall be paid by cash or bank cheque. If the land is not sold at auction the property may then be sold by private treaty upon a resolution of Council.
- 1.7.10 All costs associated with the sale are to be raised against the individual assessment or apportioned over all assessments.
- 1.7.11 Upon the settlement of the sale:
- If the amount is less than the outstanding balance Council will consider the debt to be paid in full in accordance with Section 719 of the Act.
 - If the money received is more than the amount outstanding Council will hold the money for persons having estates or interests in the land immediately before the sale according to their respective estates and interests. Section 720 of the Act provides for Council to 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.
- 1.7.12 Upon finalisation, the sale results shall be reported to Council.

2 **Procedures – Sundry Debtors**

2.1 **Debtors Invoices and Statements**

2.1.1 Invoices are raised as debtor information comes to hand. Invoices are issued as they are produced. The terms for payment of invoices are thirty days after the end of the invoiced month, exceptions are noted as per 2.1.3 Private Works below.

2.1.2 Statements are issued within seven days of the end of month.

2.1.3 Private Works:

- In the case of non-property owners or owners who do not own property in Temora Shire, or the work does not constitute a charge on the land, payment is required based on estimated cost, prior to the commencement of works.
- In the case of Government Departments, Public Authorities or companies, a written official order form is required prior to the commencement of works.
- In the case of developers or sub-dividers, payment up front is required based on estimated costs.
- Council reserves the right to refuse credit for private work accounts where a property owner has other overdue amounts owing to Council or has a poor payment of debt history with Council.

2.2 **Overdue Debtors**

2.2.1 If an account is not paid by the due date, a second and third statement will be forwarded as a reminder.

2.2.2 Private Works – in the case of Private Works for owners of property in Temora Shire, where the work constitutes a charge on the land if the account is not paid after ninety days, no further recovery action will occur. A statement will be sent every six months as a notification of the amount of the debt on the land.

2.2.3 Compulsory Contributions to Footpaths, Kerb and Guttering and other Works: - in the case of Compulsory Contributions, where the work constitutes a charge on the land if the account is not paid after ninety days, no further recovery action will occur. A statement will be sent every six months as a notification of the amount of the debt on the land.

2.2.4 This collection policy does not apply to the collection of debts from Funeral Services. This exception is made to reflect the sensitive nature of the debt and the collection efforts of the funeral service. The Funeral Service arrangement provides that payment is made to Council when received by the funeral service.

2.2.5 For all other debtors (including Private Works which do not constitute a debt on the land) – once the account is overdue by ninety days or more a Final Notice is sent to the debtor. If the payment is not received in full or a suitable payment arrangement entered into in writing, recovery action will commence as per 1.4.1 & 1.4.2 - Recovery Action.

2.3 Arrangements

- 2.3.1 Arrangements for payment of overdue debtors are to be made in writing on the approved form and approved on a case-by-case basis by the Director of Administration & Finance. All arrangements relating to debtors shall be recorded as an arrangement memo on each individual debtor.
- 2.3.2 All arrangements entered into via an Arrangements to Pay Sundry Debtor Account by Periodic Payments form must be paid as negotiated by Direct Debits. Other forms of payment will only be agreed to in limited circumstances at the discretion of Manager of Administration & Finance.
- 2.3.3 Direct Debits are available on a one-off basis, fortnightly or monthly on dates set by Council and need to be requested on the approved form.
- 2.3.4 Where the debtor fails to adhere to an agreement, an arrangement default notice will be issued as follows:
- Weekly or fortnightly arrangements – within seven days of the second default;
 - All other arrangements – within seven days of the first default.
- 2.3.5 Where a debtor fails to recommence their arrangement within the time specified, recovery action will recommence from the stage which had been reached prior to the last arrangement being negotiated.
- 2.3.6 All legal costs and expenses incurred in recovering outstanding sundry debts shall be added to the debt outstanding.
- 2.3.7 For debtors that have an arrangement to pay by direct debits set up, for each instance of funds returned unpaid a dishonoured payment fee will be charged to the debtors account to cover costs. If three separate instances of returned funds are recorded within a financial year an administration fee on dishonoured payments will be charged to the debtor account. Refer to Council's Schedule of Fees and Charges for relevant fees. On the fourth instance of funds returned unpaid the Arrangement to Pay by Periodic Payments will be considered cancelled and full payment of the outstanding amount is due immediately. Failure to pay will result in Legal Recovery without further notification.

3 List of Approved Forms & Letters

Reminder Notice – Ratepayer (adjusted as required)
Reminder Notice – Debtor (adjusted as required)
Final Notice – Ratepayer (adjusted as required)
Final Notice – Debtor (adjusted as required)
Arrangement to Pay Rates by Periodic Payments
Arrangement to Pay Sundry Debtor Account by Periodic Payments
Arrangement Default Notice (adjusted as required)
Centrepay Deduction Form
Hardship Rate Relief Application
Direct Debit Request