

	PROCEDURE	Version:	1
	Debt Recovery	Date Adopted:	9 May 2024
		Next Review Due:	May 2028

This procedure relates to the Internal Control Policy.

1. PURPOSE

Council depends on income from revenue streams such as rates and sundry debtors to fund services and facilities for the community. This Procedure sets out the practice of the Council for the recovery of unpaid rates and sundry debts. It ensures Council undertakes recovery action in a fair and consistent manner that provides assistance to debtors experiencing financial stress / hardship where necessary whilst complying with Section 180 of the *Local Government Act 1999* (the Act).

2. DEFINITIONS

Arrangement is an agreement between Council and a ratepayer and/or debtor to repay an amount of money within a timeframe according to an agreed schedule.

Debtor means an individual, business or organisation that has an outstanding invoice to Council for rates or following the provision of goods and services or the use of facilities including where fines or licence fees are levied.

Debt means monies owed by the debtor as a result of a transaction with Council.

Debt Write-off means those debts where all avenues of recovery have been explored and the outstanding debts are considered non-recoverable.

Default means where a Council approved payment arrangement is in place and payments are not made as agreed by the ratepayer and/or debtor.

Financial hardship means experiencing lack of financial means, which can be ongoing or temporary, but does not include circumstances where a person chooses not to meet a liability for an unpaid debt.

Financial stress means a circumstance of experiencing reduced financial means.

Payment arrangement means an agreement negotiated with Council to regularly pay agreed amounts of money to discharge the debt.

Prescribed percentage is the amount calculated in accordance with Section 181(17) of the *Local Government Act 1999* based on the cash debenture rate for that financial year.

Ratepayer/s means the person/s who appear in the assessment record as the owner/s, occupier/s or principal ratepayer/s of a rateable property.

3. PRINCIPLES

3.1 Scope

This procedure applies to the collection of outstanding monies from unpaid Council rates and sundry debtors of Council.

3.2 Principles

The following principles apply in relation to the operation of this procedure:

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- Council recognises it has responsibility to recover monies owing to it in a timely, efficient and effective manner to finance its operations and ensure effective cashflow management.
- Council will treat all people fairly, equally and with confidentiality.
- Council will recognise genuine financial hardship and treat people with respect and compassion in considering their circumstances.
- Debtors are expected to take responsibility for their Council debt obligations and to discharge these obligations when required.
- If a debtor cannot meet their obligations by the due date, it is in the interests of the debtor and Council that the debtor contact Council at the earliest opportunity to make appropriate arrangements to address the debt.
- Council will explain the debtor's legislative rights and obligations in relation to any action that Council might take to recover the debt.
- Council will not issue a letter of demand from a collections agency to a debtor without first taking all reasonable steps to establish a payment arrangement or negotiate settlement of the outstanding debt.
- Once a letter of demand has been issued from a collections agency and payment still has not been received, legal action will commence and any settlement negotiations will be made 'without prejudice' to ensure the legal right to collect the debt is not compromised.

3.3 Rates Debtors

3.3.1 Payment Agreements

Applications can be made to the Council under Section 181(15) of the Act to pay rates in a form other than four standard instalments. Applications may be approved on the condition that fines, costs and other charges applicable under the Act continue to apply on all outstanding debt.

All applications must be made to Council in writing. Any application made under this Section must be of a reasonable quantum to ensure full payment of the outstanding amount by 30th June of that year or at the discretion of the Manager Finance and/or Director Corporate Services (DCS) taking into account the amount owed and the time of year.

All payment arrangements will be determined on the merits and circumstances of each case. Recovery action for overdue rates will be suspended whilst the terms and conditions of the payment arrangement are determined, however fines and interest will continue to apply as per section 3.3.2 of this procedure.

Each arrangement will specify the amount of each regular payment and the frequency of which payment must be made to Council. Payments under an arrangement should be of regular amounts and paid at regular intervals.

Payment defaults of two consecutive payments – default being either late payment or non-payment of the agreed amount – will result in termination of the payment arrangement. Recovery action may be taken for the amount due.

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All payment arrangements are only valid until 30 June of each year. If rates are still in arrears of the financial year, a new arrangement will need to be negotiated with the aim to have all rates paid by the end of that financial year.

A written confirmation agreeing to the terms and notifying the ratepayer of their obligations will be sent to the ratepayer to formalise the agreement.

3.3.2 Fines and Interest

Fines and/or interest will be processed in accordance with Section 181(8) of the Act.

If an instalment of rates is not paid on or before the date on which it falls due –

- the instalment will be regarded as being in arrears; and
- a fine of 2 percent of the amount of the instalment is payable and;
- on the expiration of each full month from that date, interest will be incurred at the prescribed percentage of the amount in arrears (including the amount of any previous unpaid fines and including interest from any previous month) calculated using the formula below pursuant to Section 181(17) of the Act:

$$P = \frac{\text{CADR} + 3\%}{12}$$

P is the prescribed percentage

CADR is the cash advance debenture rate for that financial year.

Section 181(8) does not apply with respect to the postponement of the payment of rates under another section of the Act (while postponement is occurring in accordance with the relevant section).

3.3.3 Write-Offs

The Council may cancel ('write off') in whole or in part, fines and/or interest levied on rates as per Section 181(9) of the Act.

Applications can be made under the Act to the Council under the following circumstances :

- Where the applicant can demonstrate that the rates notice was forwarded to the wrong address, the error being with the Council.
- Where the applicant can demonstrate inability to pay rates due to financial hardship and all outstanding rates have been paid in full or a payment agreement made with Council.
- Where the applicant can demonstrate that special legal action prevented the rates from being paid by the due date.
- Where Council is of the opinion that such a write-off is appropriate using the following guidelines.
 - Commencing 1 month after the relevant due date for payment of rates, or the final instalment if appropriate, and monthly thereafter, any account in the rates area with a total debt of less than \$10, is to be written-off.

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- ii. Where the outstanding amount comprises only of fines, in the instance of a property settlement, the amount is to be written-off to clear the debt. This only applies to the amount being less than \$20. If the amount exceeds \$20.00 then the debt is to remain on the books for reimbursement to be sought from the Land Broker/Solicitor handling the transfer.
- iii. Where the Council has made a decision pursuant to Section 182 of the Act.

3.3.4 Overdue Letter/Final Notice

A letter stating 'Rates Overdue' will be issued within 14 days after the due date of the quarterly instalment to all ratepayers who have rate arrears and have not made satisfactory payment arrangements. This letter will advise of the outstanding debt (including any fines and interest) and that payment is due within 14 days.

The letter will advise that failure to pay or make a suitable payment arrangement will result in the debt being referred to Council's debt collection agency for recovery.

3.3.5 Legal Action

Legal action will be initiated by referring the debt to Council's debt collection agency, which will send a 'Letter of Demand' to the ratepayer. Council is then guided by the collection agency as to the most appropriate form of recovery action.

Once the debt has been referred to the debt collection agency, all communication regarding it will be directed to the agency.

All eligible legal costs and expenses incurred by the Council from the recovery process will be included in the ratepayer's debt to Council.

If the debt collection agency exhausts all possible efforts to recover rate arrears, then the DCS can authorise the debt collection agency to commence court proceedings if the amount owing is \$500 or more.

3.3.6 Sale of Property for Non-Payment of Rates

Where rates have remained unpaid for a period of three (3) years or more, Council may use the powers under Section 184 of the Act to recover outstanding rates through the sale of the property.

The process will only be initiated after all reasonable attempts have been made with the ratepayer concerned and Council is consulted on the decision to sell the ratepayer's property.

All charges associated with the recovery of outstanding rates will become a charge upon the property and are recoverable as part of the rates on that property.

To commence the sale process, the solicitor acting for Council will issue a Section 184 Notice to the ratepayer and the mortgagee to seek payment in full of the outstanding rates.

If after one further month of the Section 184 Notice the ratepayer fails to contact Council or the solicitor, pay the outstanding rates in full, or enter into a satisfactory payment arrangement, Council will appoint a real estate agent to carry out the sale process.

These proceedings can only be stopped, up to the commencement of the auction, by payment in full of the arrears and associated costs. All debt recovery costs and fees associated with the sale of the property will be borne by the ratepayer.

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3.3.7 Application of Money in Respect of Rates

If Council receives or recovers an amount in respect of rates, the amount will be applied pursuant to Section 183 of the Act, as follows:

- First – in payment of any costs awarded to, or recoverable by, the Council in any court proceedings undertaken by the Council for the recovery of the rates;
- Second – in satisfaction of any liability for interest;
- Third – in payment of any fine;
- Fourth – in satisfaction of liabilities for rates in order in which those liabilities arose.

3.4 General Debtors

General debtors include people owing Council miscellaneous monies including but not limited to lease fees, recurring charges and administrative charges.

3.4.1 Arrangements to Pay

All payment arrangements will be determined on a case-by-case basis. Recovery action for general debtors will be suspended while the terms and conditions of the payment arrangement are being determined.

Each arrangement will specify the amount that must be paid to Council and the frequency of each payment (e.g. monthly). Payment arrangements need to be agreed amounts paid at regular intervals.

Two consecutive payment defaults (default being either a late payment or non-payment of the agreed amount) will result in the arrangement being terminated. Recovery action may be initiated to obtain the amount owed to Council.

3.4.2 Overdue Letter/Final Notice

Debtors who have not made payment arrangements with Council will be issued a letter 14 days after the due date of the invoice stating 'Invoice Overdue'. The letter will advise of the outstanding debt and that payment is due within 30 days.

If payment is not received, a letter stating 'Final Notice' will be issued advising that failure to pay or make suitable payment arrangements will result in the debt being referred to Council's debt collection agency for recovery.

If Council does not receive a response within 14 days and the debt is \$50 or more, Council may refer the matter to its debt collection agency.

3.4.3 Legal Action

Legal action will be initiated by referring the debt to Council's debt collection agency, which will send a 'Letter of Demand' to the debtor. Council is then guided by the collection agency as to the most suitable recovery action.

All legal costs and expenses incurred by Council in the recovery of the debt will be charged to the debtor.

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3.4.4 Write-Offs

If the CEO is satisfied that sufficient recovery action has occurred under this procedure, a debt of \$10,000 or less may be written off by the CEO. Any amounts greater than \$10,000 are to be referred to Council for approval to write off.

If a debtor who has a debt written off should seek additional services from Council that are the subject of a general debtors account, credit will not be extended to the debtor until the previous debt has been satisfied.

Where a general debt has been principally satisfied and a small balance of less than \$20 remains unpaid, this amount will be declared a 'small balance' and can be approved by the Finance Manager or DCS to be written off at the end of the financial year.

The Finance Manager will ensure all debts are regularly reviewed.

3.5 Further Information

For further information about this procedure and options available in relation to this procedure, please contact Council's Rates Officer, Wattle Range Council, PO Box 27, Millicent SA 5280, telephone: 08 8733 0900, facsimile 08 8733 4999, or email: finance@wattlerange.sa.gov.au

3. REVIEW

This Procedure will be reviewed every four years. Upon review, ELT and Council must be consulted.

4. AVAILABILITY

This Procedure is available on the Council website: Council Website: www.wattlerange.sa.gov.au.

A copy of the Procedure may be purchased from the Principal Council Office, Civic Centre, George Street, Millicent upon payment of a prescribed fee in accordance with Council's Schedule of Fees and Charges.

5. REFERENCES & FURTHER READING

References	•
Relevant Legislation:	• <i>Local Government Act 1999</i> – Part 1, Chapter 10 – Rates and Charges; Division 9 – Imposition and Recovery of Rates and Charges
Relevant Policies / Procedures / Guidelines	This procedure should be read in conjunction with:- • Rating & Rebates Policy; • Council Delegations – Appendix 12 no. 52 and 53

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6. ADOPTION & AMENDMENT HISTORY

The table below sets out the adoption, review and amendment history of the procedure.

Version No:	Issue Date:	Authorised by:	Description of Change:	Minutes Reference:
1	9 May 2024	Audit and Risk Committee	Adopted. Procedure replaces Recovery of Outstanding Debts Policy revoked by Council on 11/06/2024	Folio 11011; Item 9.6

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