



POLICY MANUAL

Policy title:	Debt Management
Policy number:	1.5.16
Objective:	
Link to community vision/service:	LEADERSHIP AND PARTICIPATION
Program Area:	Finance
Policy created: September 2022	Council adopted: 13/12/2022
Last reviewed by staff: September 2022	TRIM Ref: ED22/46944

Background:

This policy defines how Lismore City Council (“Council”) will undertake Debt Management. This policy takes into consideration the 23A Debt Management and Hardship Guidelines issued November 2018, Local Government Act (1993) and Local Government (General) Regulation 2021.

Scope of this Policy:

- This Policy covers all elected members of Council, all personnel employed by Council, any person or organisation contracted to or acting on behalf of Council, any person or organisation employed to work on Council premises or facilities and all activities of the Council.
This policy relates to all parties that owe monies to Council.
- Some aspects of the debt recovery procedure will differ according to the type of debtor, so they are treated separately in this policy.

Objectives:

- provide a process that is ethical, transparent, open, and accountable
- fulfilling the statutory requirements of the Local Government Act 1993 and the associated Local Government (General) Regulation 2021 with respect to the recovery of rates, charges, fees, and other debts.
- assist debtors to understand their payment obligations and the processes used by Council to help them meet those obligations.
- treat all customers fairly whilst carrying out this responsibility, with respect and sensitivity in considering their circumstances.
- provide a clear and concise framework for the efficient and effective collection of outstanding debts
- to be sympathetic and helpful to debtors suffering genuine financial hardship.
- provide eligible pensioners with the statutory and non-statutory pensioner concession rebates relating to rates and annual charges.

Delegation of Authority

Council hereby expressly authorises the General Manager (or such person as delegated) to take action in accordance with this Policy.

Summary of key points in making this Policy:

General –:

- payment of monies owed to Council (rates & annual charges and other debtors), fund facilities and services to the community.
- payment of water and sewer accounts ensure continuous service to our community.
- it is in the community's interest to maximise the collection of payment of monies owed to Council and to recover interest, costs, and expenses where these are necessarily incurred.
- debt recovery procedures need to consider individual cases of genuine financial hardship.

Council:

- is required to conform to sections of the **Local Government Act 1993 (“Act”)** (Sections 560-610 & Section 712-726) which deal with debt recovery of outstanding rates and charges.,
- is required to conform with regulations 133 and 213 of the **Local Government (General) Regulation 2021**
- is required to conform to the Privacy and Personal Information Protection Act 1998.

Legal Action - Council will:

-
- engage with its customers who have overdue debts to obtain payment to satisfy their account and prevent avoidable escalation of the debt recovery processes and the use of legal action.
- not instigate legal action against any person who has evidenced genuine financial hardship and who is willing to enter into and comply with an affordable, approved payment arrangement.
- not instigate legal action against any person who is complying with an approved payment arrangement.
- not reduce the debt for the purposes of debt recovery
- recover legal costs and expenses incurred in the process of debt recovery where it is legally able to do so.

Hardship - Council will:

- recognise that in cases of genuine financial hardship, assistance may be required in respect to payment. Council has a Hardship Policy – 1.5.11 (<https://lismore.nsw.gov.au/files/1511-Rates-and-Charges-Hardship-Policy.pdf>). The policy establishes guidelines for assessment of hardship applications.
- ensure the hardship application process identifies those ratepayers who are experiencing genuine financial hardship and are eligible for assistance.
- conform to sections 564, 567, 575, 582, 601 of the Act, which deals with options available in respect to customers experiencing hardship, payment arrangements and the waiving of interest/fees due to hardship, payment agreements, revaluation of lands or being an eligible pensioner.

1. Rates & Annual Charges:

A. Levying of Rates and Annual Charges (*excluding Water Charges*)

Council must levy rates and charges by service of a rates notice in accordance with section 546 – 550 of the Act. A Rate or Charge under this Act is (including any interest and any cost awarded by a court in proceeding) is a charge on the land.

Council will endeavour to serve rates notices in the month of July of every year.

The rates and charges are adopted by Council each year and are outlined within the Revenue Policy of Council which forms part of the Operational Plan - <https://lismore.nsw.gov.au/strategic-plans-guiding-the-future-of-our-community>

B. Water

Council's water charges are billed quarterly, in arrears. Accounts are issued 21 days before the due dates.

C. Payment of Rates and Charges

Chapter 15, part 7 of the Local Government Act 1993 (the Act) sets out the requirements for payment of rates and charges.

Section 562 of the Act allows for annual rates and charges to be paid in a single instalment or by quarterly instalments. If a payment is made in a single instalment, the instalment is payable by 31 August. If payment is made by quarterly instalments, the instalments are payable by 31 August, 30 November, 28 February, and 31 May.

Instalment Reminder Notices

Under section 562(5) of the Act, Council must send instalment reminder notices to each person who is paying their rates and charges by instalment on or before 31 October, 31 January, and 30 April. Annual rates and charges notices and Quarterly instalment reminder notices are issued 30 days before the due date.

If Council serves the rates notice after 1 August, then the provisions of section 562(4) of the Act will apply.

D. Recovery Action - instalments become overdue Interest

Under section 566 of the Act, interest will accrue on overdue rates and charges at the maximum allowable rate set by the Minister by notice published in the Gazette each year. This is set out in Council's Revenue Policy each year.

Payment Arrangements

Under section 564 of the Act Council is able to come to an arrangement for the payment of amounts owing by way of periodical payment.

Council is to negotiate such arrangements with the aim, where possible, that all arrears (Including costs incurred in legal proceedings) are to be paid within the current rating year – together with the current year's rates and charges. Where the calculated arrangement payment would cause the ratepayer to suffer hardship, the arrangement payments should be calculated over the 12-month period from the date of the arrangement, with the arrangement period not to exceed 24 months from the date of the arrangement.

Defaulted Arrangements

Should a ratepayer default on a payment arrangement then:

- (a) If the arrangement has been made directly with Lismore City Council ratepayer, recovery action will continue from the last stage it reached; and
- (b) If the ratepayer has been referred to the Debt Recovery Agent for action, that Debt Recovery Agent will send a letter demanding payment of the missed instalment and if it is not complied with, unless the ratepayer has taken some step that delays the process, recovery action will be continued from the last stage it reached.

E. Hardship

The Act provides a number of circumstances where a discretion is available to Council to release ratepayers from some (or all) of their obligations due to what has come to be termed hardship. The sections include:

- Section 567 – writing off accrued interest

- Section 577 – concessions for pensioners
- Section 582 – waiver or reduction of amounts owing by pensioners

Council staff are to advise the account holder that financial counselling is not provided by Council but is available from agencies such as Northern Rivers Community Gateway, Centrelink, Mission Australia, and the Salvation Army.

Any application by a ratepayer on the grounds of hardship, which must be written, are to be referred to the Rating Officer for determination in accordance with Council's adopted procedures.

RATES & CHARGES HARDSHIP Policy 1.5.11 - <https://lismore.nsw.gov.au/files/1511-Rates-and-Charges-Hardship-Policy.pdf>.

F. Sale of Land for Unpaid Rates (to be a last resort)

Where any rate or charge is overdue and remains unpaid for more than 1 year in respect to vacant land or 5 years in respect to any other land, from the date it became payable, Council may proceed to sell the land, as a last resort, in accordance with Chapter 17 Part 2 Division 5 of the Local Government Act, 1993.

Where vacant land is concerned, land may be sold after rates or charges have remained unpaid for only one year, as long as the council obtains a valuation of the land which shows that the total amount of unpaid rates and charges exceeds the land value. The council needs to sell the land within six months of the date of receipt of that valuation.

G. Water Restrictions (to be a last resort)

For unpaid water accounts, an "Intent to Restrict Water Supply Notice" will be issued by Council. The service of the Notice will be by hand delivery to the property. The time, date and place or manner of service of hand delivered notices will be recorded.

The Notice will include:

- the total overdue amount now payable, including interest,
- notice that if the amount is not paid, or an arrangement for payment made within 7 days, the water will be restricted without further notice,
- the cost of the water restrictor fee,
- advice that nominal supply to the property will be reduced,

Tenanted properties cannot have their water supply restricted as the debt is the responsibility of the landowner. In these instances, legal action will be pursued against the landowner.

After expiration of 7 days for payment on an "Intent to Restrict Water Supply Notice", written instruction will be given to the Water and Sewer staff to restrict supply and the water restrictor fee will be added to the account.

Restriction will be made by fitting a restriction device so as to make available a nominal supply. At the time of restriction, a "Water Supply Restricted Notice" will be issued and served by hand delivery at the property.

That Notice will include the following advice:

- the total overdue amount now payable, including the water restrictor fee,
- that the water has now been restricted,
- the supply will not be restored until the total amount outstanding is paid, or evidence of continued ongoing payments as per any agreed arrangement is seen,
- if full payment is being made, payment must be made directly to Council and before 1.00pm if same day restoration of supply is required,
- caution needs to be exercised in the use of hot water systems,
- it is an offence to tamper with a meter or any device attached to a meter.

Council can only restrict water supply as a last resort where other reasonable attempts to recover an unpaid charge have failed and after appropriate notice has been given.

Council will not restrict water supply where it is known that the resident is a registered kidney dialysis patient or has another medical condition requiring continuous access to unrestricted water supply.

2. Other Debtors

Council issues debtor accounts for numerous services, including private works, in accordance with Council's Operational Plan and adopted Fees and Charges.

A Council approved application form must be completed, processed, and approved prior to an account being opened/made active for a debtor. Should the customer want to commence immediately, they may do so on a cash or credit card basis only.

Upon completion of an approved application, credit checks may be undertaken; should checks not be satisfactory a prepayment, bond or deposit may be requested. 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.

Council will only issue sundry debtor invoices to confirmed and identified legal entities or individual users. Trading terms are 30 days from the date of the invoice (unless otherwise specified), available to credit approved applicants only Council may cease the provision of credit facilities to debtors when an account is overdue by more than 14 days.

Due Date for Payment

Invoices sent to other debtors are due for payment thirty days from the date of issue of the Invoice (unless otherwise specified).

3. Recovery Action

Recovery Action - Overdue and no Payment Arrangement

If rates and charges and other debtors become overdue, and no payment arrangement has been entered into with Council, a process is in place to ensure the recovery of all debts at the earliest possible date consistent with the ability of the customer to pay.

Council Debt Recovery Practices are outlined in Council Corporate Procedures

- 1.3.25 Debt Recovery Debt Recovery Rates
- 1.3.26 Debt Recovery Debt Recovery Water
- 1.3.27 Debt Recovery Debt Recovery Sundry Debtors

Legal action.

If contact is unable to be made or satisfactory payment arrangements are not agreed, Council will commence debt recovery proceedings. Costs incurred for legal action and fees for the installation of water restrictors are added to the debt, as well as interest.

Inbound Contact

To avoid confusion, double-handling and adverse legal issues, once a matter has been referred to Council's Debt Recovery Agent for collection all inbound contact from debtors is to be handled by them. Council staff are to advise such debtors to deal directly with Council's Debt Recovery Agent.

Payment Arrangements

Arrangements for payments may be accepted after legal action has commenced, subject to the continuation of legal action should the ratepayer or debtor not adhere to the approved arrangement.

Costs of Legal Action

Council is to ensure that the costs of any legal action taken are legally recoverable as a charge on the property pursuant to section 550 of the Act and to upload those costs to the property as

required.

4. Writing off Debts

A Rate or Charge under the Act (including any interest and any cost awarded by a court in proceeding) is a charge on the land and therefore remains with the Land and transfers with the title. Council will generally not write off debts legally owed to Council.

Other Debtors - Council will generally not write off debts legally owed to Council.

However, the Local Government (General) Regulation 2021 allows debts to be written off only:

- there is an error in the assessment
- if the debt is not lawfully recoverable, or
- as a result of a decision of court, or
- if Council or the General Manager (or delegate) believes on reasonable grounds that an attempt to recover the debt would not be cost effective

The fact that a debt is written off under this policy does not prevent Council from taking further action to recover the debt in the future.

The General Manager (or delegate) has delegated authority to write off sundry debts equal or less than five thousand dollars (\$5,000.00), if the debt meets any two of the following criteria:

- All reasonable collection action has been taken and was unsuccessful
- No possibility for collection exists at present
- The debtor cannot be readily located or served Court documentation
- Legal proceedings that are statute barred or the debt is legally unenforceable
- The debtor is an inoperative corporation and without assets, or the debtor is a natural person who is an undischarged bankrupt.
- The debtor is deceased

Council has the authority to write off sundry debt amounts greater than five thousand dollars (\$5,000) by resolution, if the debt meets any two of the following criteria:

- All reasonable collection action has been taken and was unsuccessful
- No possibility for collection exists at present
- The debtor cannot be readily located or served Court documentation
- Legal proceedings that are statute barred or the debt is legally unenforceable
- The debtor is an inoperative corporation and without assets, or the debtor is a natural person who is an undischarged bankrupt.
- The debtor is deceased

Debts shall be written off only when all reasonable attempts at recovery have been taken. Debts that are considered irrecoverable, or where the cost of recovery is uneconomic, shall be written off as a bad debt against the debtors account and the provision for doubtful debts according to the appropriate delegated authority.

When considering writing- off a report is to be prepared and must include:

- The name of the person/s whose debt is being written off
- Identify the account concerned
- What the debt is related to
- What date the debt was incurred, and
- Specify the amount of the debt

5. Policy Review

The policy will be reviewed at least once during the term of every council.

6. Complaints and Dispute Resolution

Complaints and or disputes to outcomes provided should be addressed in the first instance to the
Lismore City Council
Chief Financial Officer
PO Box 23A
Lismore NSW 2480
OR council@lismore.nsw.gov.au ATTN - Chief Financial Officer

REFERENCES:

Hardship - Support services

Council will, in accordance with the Guideline, refer ratepayers and those facing financial hardship to the following:

- Moneysmart.gov.au: <https://moneysmart.gov.au/managing-debt>
- Legal Aid NSW: <https://www.legalaid.nsw.gov.au/get-legal-help/find-a-service>
- Community legal centres NSW: <https://www.clcnsw.org.au/find-legal-help>

References:

Lismore City Council Policies:

Policy 1.5.11 - <https://lismore.nsw.gov.au/files/1511-Rates-and-Charges-Hardship-Policy.pdf>

Policy 1.5.13 - <https://lismore.nsw.gov.au/files/Sale of Land for Unpaid Rates and Charges Policy.pdf>

Policy 1.5.14 - <https://lismore.nsw.gov.au/files/1514---Concealed-Water-Leaks.pdf>

Corporate Procedure 1.3.25 - Debt Recovery Debt Recovery Rates

Corporate Procedure 1.3.26 - Debt Recovery Debt Recovery Water

Corporate Procedure 1.3.27 - Debt Recovery Debt Recovery Sundry Debtors

Lismore Council - Application Forms:

Natural Disaster - Financial Hardship Application -

<https://forms.lismore.nsw.gov.au/forms/11080#:~:text=Natural%20Disaster%20%2D%20Financial%20Hardship%20Application>

Application for Council Pensioner Concession Rates Rebate

<https://forms.lismore.nsw.gov.au/forms/3208#:~:text=Application%20for%20Council%20Pensioner%20>

[Concession%20Rates%20Rebate](#)

Application Direct Debit Request Form

<https://forms.lismore.nsw.gov.au/forms/9251#:~:text=Service%20Agreement-.Direct%20Debit%20Request%20Form,-Application%20Details>

Legislation:

Local Government Act 1993 (NSW)

Local Government (General) Regulation 2021

Code of Conduct (found on the intranet)

Delegations of Authority Policy (found on the intranet)

Office of Local Government Debt Management and Hardship Guidelines, November 2018