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|                             | <p>extension to an existing dwelling, new sheds, etc. A supplementary valuation may also be required for changes in use of the property that may affect the differential rate and or the fire services property levy</p> <p>Rates - includes any and/or all rates and charges on rateable land as described under Part 8 of the Local Government Act. "Rates" also includes any government imposed charge or levy that Council is required to collect on behalf of the Government.</p> <p>Seniors Housing – Council owns and/or is the committee of management for 49 seniors housing units in Gisborne, Lancefield and Romsey. The units are managed by a service provider under a contract with Council.</p> <p>Waiving of Debt - Council may waive (forgive) debt that are collectable in extraordinary circumstances.</p> |
| <b>References:</b>          | Home and Community care guidelines  |
| <b>Related Policies:</b>    | <p>Financial Hardship Policy</p> <p>Procurement Policy</p>  |
| <b>Related Legislation:</b> | Local Government Act  |

## 1. Scope

This Policy is subordinate to any regulations in relation to debts and debtors.

The Local Government Act establishes the law that applies to the declaration of rates, payment of rates, interest on outstanding rates and the collection of overdue rates.

This Policy covers:

- All debts;
- Some aspects of invoicing;
- The initial establishment of a debt;
- Follow up actions to collect outstanding debts;
- Creation of a provision for doubtful debts; and
- Write off of bad debts.

The Policy does not cover:

- Fees and charges where no debt is created (for example, applications fees that should be paid at the time the application is made and for which an invoice is not raised).
- Non monetary debts and obligations (for example, outstanding conditions on permits).

This Policy includes but is not limited to:

- Rates
- Special charge scheme debts
- Preschool fees
- Home & community care (HACC) fees
- Facility hire fees
- Lease fees
- Unpaid grants
- Fire hazard clearance charges
- Fines and infringements
- Saleyards fees
- All miscellaneous fees and charges where a debt is created
- Interest penalties on outstanding fees and charges

## 2. Objectives

- To ensure that the collection of debts is undertaken fairly, impartially, consistently, efficiently, effectively and in accordance with good governance;
- To encourage any person, organization or company having difficulty in paying an outstanding debt to contact Council and make arrangements for a payment plan to pay the debt in a reasonable and manageable timeframe; and
- To ensure that the collection of debt is consistent with the Local Government Act and Regulations, Accounting Standards and recognised financial practices.

### **3. General Principles Applicable to All Debts**

The general principles described in this section are applicable to all debts and debtors but they also need to be considered in conjunction with Section 4 which outlines specific requirements in relation to debt types.

#### **3.1 Payment Terms**

Council's payment terms are 28 days of the invoice being issued unless specific regulations apply or unless Section 3.3 of this Policy applies.

#### **3.2 Invoicing**

A debt is created when the service is provided or when the invoice is created whichever occurs first. (Note: Income is recognised in Council's accounts when the invoice has been raised).

Unless there is regulation or accepted practice to the contrary, an invoice should be produced and payment requested at the time, or in advance, of the service being provided. This practice reduces the risk of non-payment. However, it is recognised that there will be instances where invoicing and payment in advance is not practicable.

The Finance Department [**Finance**] is the only Department with authority to generate a Council invoice. Debtor invoice requests should be made on the "debtor invoice request form".

#### **3.3 Reminder Notices**

Except as specified in section 4, if payment of an invoice has not been received within 14 days after the payment due by date, a reminder notice will be sent out by Finance (except as specified in section 4).

The reminder notice will request payment within 14 days and advise of any penalties that may apply to non-payment. The reminder notice will encourage the debtor to contact Council to discuss any concerns with the debt or reasons why the invoice has not been paid.

Reminder phone calls and other debt follow up procedures may be employed by the debt owner or Finance.

If payment has not been received within 7 days payment due by date of the reminder notice, a final notice will be sent. The final notice will request payment within 3 days. The final notice will include any interest penalties that may apply.

If payment is not received in the required timeframe after the final notice the debtor may be referred to a debt collection agency (see Section 5.8)

A final notice will not be sent in relation to community support debtors and seniors housing (see sections 4.2 and 4.3) and in relation to unpaid grants. Further reminder notices will continue to be sent. A record will be kept of all attempts to contact the debtor, whether successful or unsuccessful.

### **3.4 Payment Arrangements**

Any person, organisation or company who is having difficulty in paying a debt is encouraged to contact Council and make a personal payment arrangement to pay off the debt in a reasonable and manageable timeframe.

Finance will consider requests for a personal payment arrangement [**payment plan**] and may agree upon a payment plan (for example, a weekly payment of an agreed amount until the debt is paid in full).

The Local Laws Unit may agree upon a payment plan for Local Laws fines.

The Customer Service Unit may agree upon a rates payment plan in accordance with Finance guidelines.

Details of the payment plan must be recorded and payments monitored. Any defaults (that is, payment not made by the agreed date) will be followed up by Finance (except as described in section 4) and a new payment plan may be made.

If the debtor defaults on the payment plan by missing two or more consecutive payments, debt recovery under section 3.8 of this Policy may be commenced, unless the debt is governed by regulations that prohibit debt collection.

### **3.5 Interest Penalties**

3.5.1 Council will charge interest on unpaid rates and charges in accordance with section 172 of the Local Government Act.

The penalty interest percentage rate is fixed under section 2 of the Penalty Interest Rates Act as applied on the first day of July.

3.5.2 Council will charge penalty interest on sundry debtors that are overdue by more than 60 days unless the charging of interest is prohibited by legislation or excluded by section 4 of this Policy.

For interest not to be charged, the approval of the relevant Manager and the Manager Finance is required.

The penalty interest percentage rate for sundry debtors will be the same as the interest rate prescribed for rates debtors (see 3.5.1)

### **3.6 Continuation of the Provision of services where debt is overdue**

In some cases specific regulations or funding agreements (for example Home and Community Care) require Council to continue to supply services regardless of outstanding debts.

In the case where the service is discretionary (for example facility hire charge or service fee) and is not governed by specific regulation the relevant Department or Unit must not continue to supply service where debts are more than 60 days old and no payment arrangement has been agreed.

In these circumstances approval from the relevant Director is required to continue provision of services.

### **3.7 Financial Hardship**

Under sections 170 and 171A of the Local Government Act, the Victorian Parliament has given councils the authority to:

- defer payment of rates and charges due to hardship (s170); and
- waive rates and charges and interest due to financial hardship (s171A).

Council has developed the Financial Hardship Policy for the purpose of defining Council's interpretation and application of sections 170 and 171A of the Local Government Act.

The Financial Hardship Policy is also applicable to sundry debtors.

### **3.8 Debt Recovery**

Unless there is a specific regulation or other requirements set out in Section 4 or unless a payment plan has been agreed, Council will refer a debt that is overdue by 75 days or more to a debt collection agency.

The debtor will be liable for all legal costs incurred by Council in the debt collection process.

Finance will advise the relevant department of the intention to refer the debt to a debt collection agency.

Generally, only debts over \$100 will be referred to the debt collection agency. In the case of debts under \$100, the debt will be written off in accordance with Sections 3.10 and 3.11 and the debtor will be advised that they are no longer eligible to receive the service until such time as the debt is paid.

For debt recovery action not to be taken, the approval of the relevant Manager and the Manager Finance is required.

If the initial action by the debt collection agency does not result in payment of the debt, the Finance Department will determine if it is financially beneficial to pursue legal recovery.

### **3.9 Provision for Doubtful Debts**

Section 3.9 does not apply to Rates.

A provision for doubtful debts is a liability to reflect debt that is likely never to be collected and hence is expected to be written off in future periods.

Finance will maintain a provision for doubtful debts based on the following factors:

- For debts over \$500, an individual assessment will be undertaken to determine whether a debt is doubtful. All debt assessed as doubtful will be included in the provision.
- For debts under \$500, the following arrangements will apply:
  - 50 % of debts aged between 90 days and 150 days overdue will be included in the provision (unless payment plans are in place and being adhered to).
  - 100% of all debts aged over 150 days overdue will be included in the provision (unless payment plans are in place and being adhered to).

### **3.10 Bad Debts**

Section 3.10 does not apply to Rates.

If debts are over one year old with no payment plans in place, they will be considered to be bad debts.

After all avenues to collect the debt have been exhausted approval may be sought to write off a bad debt (see 3.11).

Finance will refer all bad debts over 1 year old to the relevant Director for approval.

All approved write offs will be recorded in the nominated accounts under the Finance Department.

If a debt is written off and a client seeks to have further service provided at a future date, the written off debt will be reinstated and the client will be required to pay the debt before the service is reinstated (subject to provisions in Section 4).

### **3.11 Approval for to write off bad debts and/or penalty interest**

A bad debt of up to \$500 may be written off by the Manager Finance.

A bad debt greater than \$500 and less than \$5,000 may be written off by the relevant Director and one other Director.

A bad debt greater than \$5000 may be written off by the Council Executive.

Penalty interest associated with Sundry Debtors and Rates Debtors may be written off or waived by the Manager Finance or the relevant Director in accordance with the above mentioned limits.

### **3.12 Correction of invoicing and rating errors and issuing of credit notes**

In the event that it is discovered that an error has been made and a rate payer or debtor has been incorrectly undercharged, Council will correct the error immediately for future billing periods and invoices and Council will not attempt to apply the correct fee or charge retrospectively. This excludes supplementary valuations (see 4.1.2).

In the event that it is discovered that an error has been made and a ratepayer or debtor has been incorrectly overcharged, Council will correct the error immediately for current and future billing periods and invoices and Council will apply the correct fee or charge retrospectively to 1 July of financial year in which the error was discovered.

Upon written application from the Ratepayer or Debtor who has been incorrectly overcharged, the Director Corporate Services will consider the merits of the matter and the Director may apply the correct fee or charge retrospectively (for example in the case where an error which had previously been brought to Council's attention and not corrected).

Any credit notes or other adjustments to amounts owed due to a correction of amounts invoiced or rates levied must be approved by an appropriate delegate in accordance with the Council's financial delegations (see Procurement Policy).

### **3.13 Refunds and Waiving Of Debt**

There may be circumstances where refunds may be because the service was not provided or the service was provided in an unsatisfactory manner. The refund must be approved by the relevant Coordinator or Manager.

There may also be special circumstances where Council may waive a debt as a goodwill gesture. An example may be where a debtor has suffered severe personal hardship. In such a circumstance the debt may be written off as follows –

A debt of up to \$500 may be written off by the Manager Finance.

A debt greater than \$500 and less than \$5,000 may be written off by the relevant Director and one other Director.

A debt greater than \$5000 may be written off by the Council Executive.

## **4. Requirements in relation to Specific Types of Debtors**

### **4.1 Rates**

Section 180 and section 181 of the Local Government Acts outlines Council's powers in relation to overdue rates and charges. A Rate Notice is sent on or around 1 September each year.

Rates are payable in 4 separate instalments due 30 September, 30 November, 28 February and 31 May.

A Reminder Notice is sent 14 days after the 3<sup>rd</sup> instalment date (28 February) and 10 days after the 4<sup>th</sup> instalment date (31 May). The Reminder Notice includes unpaid amounts from previous periods and interest payable.

Each Reminder Notice states that payment must be made within 14 days. In the case of the 4<sup>th</sup> instalment payment must be made on or about 28 June.

A Final Notice is sent 14 days after the Reminder Notice for the 4<sup>th</sup> instalment (in first week of July). The Final Notice states that payment must be made within 10 days (that is about 15 July).

If the rate debt is still outstanding on or about 22 July the debt will be referred to a debt collection agency.

Council may instruct the agency or the agency's solicitors or its own solicitors to take the following steps to collect the debt:-

1. Debt collection agency urgent letter will be issued.
2. Debt collection agency final notice will be issued.
3. Application will be made to the Magistrates Court for a Complaint to be issued.
4. Pre-Judgement warning letter will be sent to the Ratepayer.
5. Application will be made to the Magistrates Court for Judgement.
6. Pre-Warrant warning letter sent to the Rates Debtor.
7. Application will be made to the Magistrates Court for a Warrant to be issued.
8. Matter referred to Supreme Court – if required.

Debt Collection is an expensive process and the full cost of any action is passed onto the Ratepayer and becomes a charge against the property.

Under the Local Government Act unpaid rates remain as a charge against the property and they must be paid first when a property is sold. Therefore, there are no doubtful debts or debt write offs in relation to Rates.

#### **4.1.1 Sale of land to recover unpaid rates**

Under Section 181 of the Local Government Act 1989, Council has the power to sell land to recover unpaid rates and charges, if the rates and charges have been unpaid for more than three years.

The benefit of selling the land is that Council will be able to recover all monies owed to it and furthermore, the property becomes a revenue producing property again, that is, the new owner is a new ratepayer.

Council will not exercise the power it has under section 181 of the Act –

- Until all other relevant requirements of this Policy (to recover the unpaid rates and charges, on the land in question) have been taken.
- There is a dwelling constructed on the land which is currently being used as a residence.
- If the land is land to which a payment plan is currently in place with the Ratepayer.
- If an Application has been made and granted under section 6.5(c) of Council's Financial Hardship Policy.

By instrument of delegation dated 24 July 2013 Council has delegated to the Chief Executive Officer all powers and authorities in respect of Section 181 of the Act relevant to the sale of land to recover unpaid rates and charges. In turn, the Chief Executive Officer has delegated that power and authority to the Director Corporate Services. Prior to any action being undertaken by Council Officers in relation to Section 181, approval must be obtained from the Director Corporate Services.

#### **4.1.2 Supplementary Valuations**

If a supplementary valuation has taken place, the ratepayer will be sent a letter and a supplementary valuation rate notice which outlines the reason for the supplementary valuation, the change in the capital improved value (CIV) of the property and the adjustment to rates.

If works were completed in the current financial year, the supplementary valuation will be backdated to the date of certificate of occupancy or the last date the property was sold (which ever date occurs last).

If the works were undertaken in the previous financial year(s), the supplementary valuation will be backdated no further than 1 July of the current financial year.

#### **4.2 Community Support Fees**

When a Community Support client is not paying the required fee, then a review or reassessment of the client's ability to pay must occur. Payment arrangements or a decision to waive fees in accordance with Home and Community care guidelines would be introduced.

Clients who have the ability to pay would be notified that unless payment is made then a notice to inform a withdrawal of service would occur. If no payment occurred then a decision to cease service provision would be made.

#### **4.3 Seniors Housing Rents**

Seniors housing rents will be collected by the service provider who has been appointed to manage the units on behalf of Council. Rent in arrears will managed by the service provider and reported to Council on a regular basis.

#### **4.4 Local Laws Infringement Notices (Fines)**

Local Laws are governed by the Infringements Act 2006.

Reminder notices will be sent if the debt is unpaid 42 days after the due date. An administration fee will be added to the penalty if payment has not been made.

If payment is not received within a further 42 days of the reminder notice, debts may be referred to either the Infringements Court or the Magistrates' Court for debt collection. The Local Laws Unit will manage the referral of unpaid fines to a debt collection agency.

#### **4.5 Leases**

There may be terms in the lease agreement that vary from the principles outlined in Section 3.

#### **4.6 Grants**

Final notices, interest penalties and debt collection processes will not be invoked for unpaid grants.

### **5. Roles & Responsibilities**

#### **5.1 Debt Owner**

The Department or Unit with responsibility for the income stream is known as the Debt Owner. The Debt Owner has overall responsibility for the management of the related debt.

The debt owner is responsible for:

- Ensuring that invoiced amounts are correct
- Providing assistance to Finance in follow up on overdue debts (in some cases all debts are followed up by the debt owner)
- Liaising with Finance in terms of the status of debts (eg whether it is likely to be recovered)
- Documenting any discussions with Debtors in relation to outstanding monies and providing the documentation to Finance.
- Ensuring further credit is not given to the Debtor with overdue debts unless there is a specific regulation, eg HACC.
- Gaining approval from the relevant Director (and in some cases the Executive) for any Debt write off and advising Finance accordingly

#### **5.2 Finance Department [Finance]**

In relation to debt collection, Finance is responsible for:

- Sending out invoices
- Recording debts in the financial systems
- Recording payments in the financial systems
- Sending reminder letters on overdue debt (except for fines and infringement notices).
- Follow up on overdue debt (with assistance from the Debt Owner).
- Determining the level of doubtful debts (with assistance from the Debt Owner)
- Referring debts to a debt collection agency after advice from the Debt Owner.
- Advising Departments on the status of outstanding debts and making recommendations on debt recovery/write off.
- Calculating the provision for doubtful debts
- Writing off debts in the financial systems after written approval has been received from the Debt Owner.