

# Rate Collection Policy and Procedure



<b>Policy type</b>	Chief Executive Officer
<b>Adopted by</b>	Chief Executive Officer
<b>Responsible General Manager</b>	General Manager Corporate
<b>Responsible officer</b>	Team Leader Revenue
<b>Date adopted</b>	This Policy was approved at the Corporate Management Team meeting held on 12 January 2021.
<b>Scheduled for review</b>	This policy will be reviewed two years from the date of adoption, or sooner if required.

## PURPOSE

The objective of this policy is to provide guidance and inform ratepayers of Council's debt collection procedures to reduce Council's outstanding debts while maintaining Council's professional relationship with ratepayers.

Rates constitute the majority of the income for Moira Shire Council and the payment of rates by property owners is crucial to the effective operation of Council.

Currently Rates and charges are levied against properties in accordance with the *Local Government Act 1989* (The Act).

Once the new *Local Government Act 2020* has been updated to reflect the pending rates and charges provisions this policy will be updated within 3 months from that date. Until such time the provisions of the *Local Government Act 1989* applies.

The timely recovery of rates and charges is essential to ensure adequate funding of the ongoing services and capital work projects Council provides for community benefit. To ensure equity to the broader community Council follows the payment due dates and interest calculation as set down in the Act.

Where hardship has not been established, Council will avail themselves of the options under Sections 177, 180 and 181 of the Act to recover overdue amounts. These recovery methods may include legal action and ultimately the sale of the property in question.

## SCOPE

This policy will apply to Council, its employees, and its contracted service providers, including all employees of the Revenue team and Council's debt collection agency.

The policy also applies to all property owners and ratepayers of Moira Shire Council. In particular, the policy applies to those property owners where financial hardship cannot be established and Council may avail itself of the collection options under Sections 177, 180 and 181 of The Act to recover overdue amounts. These recovery methods include legal action and, in extreme circumstances, the sale of property.

It is important to note that this policy does not apply to the Fire Services Levy as that is a State government levy and Council does not have the power to waive or defer these debts.

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Overdue rates and charges cannot be challenged on the basis of non-compliance with this policy and must be paid in accordance with the required payment provisions.

Throughout any of these steps, a ratepayer may contact Council's Revenue Department to negotiate a mutually agreed payment arrangement, at which time, any action (whether it be legal action or early intervention action) will be suspended. Failure to comply with the agreed arrangement will result in the collection process resuming. Council reserve the right to discontinue any further payment arrangement negotiations if the conditions are not adhered to.

## OBJECTIVES

The objectives of the Rate Collection Policy are to:

- ensure all debts owed to Council are paid, where possible, by the due date and followed up within specified timeframes;
- ensure a fair, equitable and accountable approach to Council's debt management and collection decisions and practices;
- provide transparency to ratepayers, Councillors, and staff as to Council's debt collection protocols and framework;
- assist ratepayers to meet their obligations, rather than redistributing the impact of rate arrears to other ratepayers;
- ensure Council's debt collection is sensitive and responsive to financial hardship issues;
- provide assistance to ratepayers experiencing financial hardship; and
- provide guidelines for council staff and its contractors to manage ratepayer financial hardship effectively and consistently.

Whilst the collection of rates and charges at Moira Shire Council is in accordance with the *Local Government Act 1989*, this policy will ensure that Council has clear documented guidelines for the efficient and consistent collection of all outstanding property rate accounts.

## SECTION 1 – RATES AND CHARGES COLLECTION

Council relies on the prompt payment of rates and charges to run the municipality. Rather than redistributing the impact of rate arrears to other ratepayers, Council's debt collection process will be continual and ongoing.

Arrangements for the payment of rates and charges are detailed in s167 of Act. The current Instalment due dates are:

First instalment	30 September
Second instalment	30 November
Third instalment	28 February
Fourth instalment	31 May

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Lump sum payments are due by 15 February.

Rate accounts that are paying in quarterly instalments will receive an instalment notice at least 14 days before the due date of each instalment.

Rate accounts that are on a lump sum payment will receive an instalment notice at least 14 days before the due date of 15 February.

Fortnightly payments may also be setup by contacting Council. The fortnightly payments will be calculated for a period of 20 fortnightly repayments (40 weeks).

If any of the above dates fall on a non-business day, the payment date is moved to the next Business day.

Council will consider all payment options that can be managed within the Revenue area and aims to:

- Establish principles to apply to the overall collection of property rate accounts;
- Establish options of payment (Full, Instalment, Direct Debit, and Arrangements); and
- Identify the type of assistance that may be offered by Council.

Council has an established Financial Hardship Policy and should be referred to for information on waivers, payment plans or deferrals.

## SECTION 2 – EARLY INTERVENTION STRATEGIES

When a ratepayer does not meet their payment obligations Council will make reasonable endeavours to inform them of the overdue amount.

The convention for Early Intervention is as follows:

Step	Action
Reminder Notice issued	A reminder notice requesting payment will be issued 14 days after the final lump sum payment is due on 15 Feb or the fourth instalment payment for those paying quarterly. The ratepayer will have 14 days to make payment.
Final Notice issued	If no payment or action has been taken by the ratepayer 14 days after a reminder notice has been sent, and the amount of rates outstanding is greater than \$500, a final notice will be issued by Council
Pending Legal Action	If the account remains unpaid after the final notice a notice is issued advising the ratepayer if no action is taken within 14 days of the notice then the account will escalate to Council's debt collection agency
Phone Call, text and/or Email contact	If the account remains unpaid after the Pending Legal notice Council will attempt contact with

	the ratepayer in the form of a text, phone call and emails to discuss the outstanding balance and a payment arrangement put in place
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## Payment Arrangement

A payment arrangement is a schedule of payments agreed to by both the Council and ratepayer which provides for flexible payment of debts after their due date has lapsed. This differs from 'instalment payments' which Council offers for on-time payment of rates and charges. Details on different options for payment arrangements can be found in Council's Financial Hardship policy.

## SECTION 3 – DEBT COLLECTION INITIATION

If the rate account remains unpaid after early intervention by Council and the debt is over the threshold allowed for outstanding rates, then the debt will be referred to Council debt collection agency. The current debt threshold is set at \$2,000. As the costs of legal action are significant and are charged to the property rate account the threshold his may be reviewed and changed at any time by the General Manager Corporate. Any changes will be published within this policy with the date noted.

This measure will provide more time for hidden instances of financial hardship to emerge, whilst not disadvantaging the Council as penalty interest will continue to apply.

In accordance with *Section 180, "if a rate or charge (including any instalment or any part of a rate or charge) remains unpaid after it is due and payable, the Council may recover it in the Magistrates' Court or by suing for debt"*.

A mutually agreed payment arrangement between Council and the ratepayer may be put in place at any time during the debt collection process – including legal proceedings. The arrangement will result in the suspension of any legal proceedings. If the arrangement is breached, then legal proceedings will continue.

The Financial Hardship policy should be referred to for further information on payment arrangements. Council reserve the right to discontinue any further payment arrangement negotiations if the conditions are not adhered to.

## Debt Collection Referral

In order the accounts to be referred to Council's debt collection agency a file will be produced listing all outstanding greater than the debt threshold. This file is reviewed by the Revenue Officer and then referred to commence the recovery process.

The early intervention process by the debt collection agency is as follows.

Day 1	Demand letter requiring payment within 14 days
Day 3	Contact tracing (using various electronic sources to obtain additional contact details for ratepayer)
Day 7	Phone Call

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Day 10	SMS/Email
Day 14	Notice Before Summons (Solicitors letter)
Day 20	SMS/Email
Day 24	Phone Call
Day 30	SMS/Email

Following the completion of this early intervention any accounts over the debt threshold that remain unpaid or have no arrangement in place will proceed to a field call.

## Field Calls

Amounts over the debt threshold that remain unpaid will then be scheduled for a field call.

- In undertaking a field call, a process server goes to the mailing address or property location to interview the debtor or ascertain where the debtor may be located.
- If no one is in attendance at the premises, then the process server returns another (2) times and will leave a card advising the occupier of the premises to contact them.

The process server will complete a report which is then sent back to the debt collection agency which shows the type of property, vehicles on the premises and any other information as to the interview or non-presence of persons.

## SECTION 4 – LEGAL ACTION PROCEDURE

Throughout any of the above mentioned stages, a mutually agreed payment arrangement between Council and the ratepayer may be put in place which will suspend any legal proceedings. If the arrangement is breached, then legal proceedings will continue.

Details on different options for payment arrangements can be found in Council's Financial Hardship policy. Council reserves the right to terminate any negotiations in regards to a payment arrangement if the terms and conditions are not adhered to.

All associated legal fees in relation to debt recovery action are as per the Magistrates Court General Civil Procedure Rules – Scale of Costs, all of which are recoverable from the ratepayer. Any legal costs incurred will generally not be waived. Council's Hardship Policy should be referred to for waivers.

## Issuing of Complaint

After a minimum of 21 days since the initial Demand letter or text, should no contact (including the receipt of full or part payment) be received from the customer by either Council or the debt collection agency and the amount of the debt is no less than the threshold. The debt may be referred to the Magistrates' Court and a Complaint issued in accordance with Section 180 of the Act.

Once a complaint is prepared and lodged with the Court for issue, the associated legal costs become chargeable to the ratepayer.

Within 21 days from the date of service of a complaint the ratepayer is obligated to:

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- Pay the claim in full plus costs or
- Request a suitable payment arrangement or
- Lodge a completed Notice of Defence with the Court (thereby giving notice of their intention to dispute the claim).

After the expiration of the 21 days if the ratepayer has failed to carry out any of the above (including the receipt of full or part payment be received from the ratepayer by either Council or the debt collection agency,) an application will be made to the Court for a Judgement Order against the ratepayer for the amount of the debt plus costs.

## **Issuing of Judgement (Magistrates Court)**

A Judgement Order will have a negative effect on the ratepayers' credit file for the next 5 years. Judgement must be obtained prior to the expiry of the Complaint (regardless of the debtor's circumstances) if the debt including legal costs aren't paid in full.

If payment is made in full after the Judgement Order has been entered, then Council will issue a letter confirming the debt has been paid and requesting the judgment to be set aside by the court. The debtor can then take this letter to the Court and apply to have the Judgment dissolved.

**Where the above actions fail to result in collection of the outstanding debt, the following actions are available to Council to facilitate recovery:**

## **Instalment order (Judgement Debt Recovery Act)**

An application may be made to the Court of an Order that debts including interest and costs be paid by instalments. This is done by way of Application to the Court. The Court then may Order that the defendant pay the outstanding amount according to their means.

## **Summons of Oral Examination (Magistrates Court)**

After 14 days from the date of issue of the Judgement, should no contact (including the receipt of full or part payment) be received from the customer by either Council or the debt collection agency the matter may proceed to Summons Oral Examination (SOE).

This procedure is used for gathering information about the debtor, including assets, bank account, employment details, etc.

A summons for oral examination is served on the defendant, which requires them to attend Court and be examined by the Registrar of the Magistrates' Court.

The defendant must divulge their financial situation under oath to the Registrar including their means to satisfy the debt.

If the defendant fails to attend on the specified day, the Court may issue a Warrant to Arrest to enforce attendance.

## **Issue of Attachment of Earnings**

An Attachment of Earnings Summons can be issued by the Magistrates Court. A "Particulars of Employment" form is sent to the payroll office of the defendant's employer. This form is then

completed and returned to the solicitor setting out the gross/net wages, number of dependents etc.

The Court can then order that a specified amount be deducted from the defendant's wages. It is an offence for the employer not to return the particulars of employment form or refuse to make deductions as ordered by the court.

The defendant's employment cannot be terminated under the Act as a result of this action.

## **Rental Demands**

The rental demand procedure is available under Section 177 of the Act.

By way of service of a rental demand, the rent paying occupier is notified that he/she is required to pay rent directly to Council. It is an offence for the owner to interfere with these payments.

If the occupier refuses to comply with this demand, Council may issue legal proceedings against the occupier to recover the total amount due in accordance with the provisions of the Act.

## **Mortgagee Letter**

If other legal procedures have not been successful, Council can establish via a Title search if there is a mortgage on the property.

A letter of demand is then sent to the mortgagee. This may result in the bank or other lending institution paying the outstanding amount.

## **Caveats**

As rates and charges are a first charge on a property, Council can lodge a caveat on title where rates and charges remain unpaid.

This does not result in immediate payment; however, it secures Council's debt. If the property is sold or re-financed the caveat cannot be withdrawn to allow transfer unless the outstanding amount is paid in full.

## **Warrant Seizing Goods**

A Warrant can be issued to the Sheriff's Office requesting a seizure of goods. It should be noted that some goods are not able to be seized like necessary household goods, tools of trade and low valued motor vehicles.

## **Final step: Sale of Land for Unpaid Rates and Charges**

The final course of action available to Council under Section 181 of the Act allows for the sale property for the purpose of collection of the outstanding rates and charges.

- There must be rates and charges outstanding for a period of 3 or more years.
- Council must pass a resolution to sell the property for the recovery of outstanding rates and charges.
- Council must obtain appropriate Court orders.
- Council must not have an existing current arrangement for the payment of outstanding rates and charges.
- A written valuation of the land must be obtained from a Valuer.

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- Serve a notice on anyone appearing from the Land Title Register as an interest in the land.
- Give public notice of Council's intention to sell and
- Notify registered parties of auction details.

Once all requirements above are fulfilled, Council's debt collection agency will issue a pre Section 181 letter to the property owner advising that Council will proceed to sell the property if no action is taken.

The sale of a property is only taken once Council has exhausted all other debt collection options. A report will be generated outlining details of the property and the actions that have been taken in order to recover the outstanding debt. The elected Councillors will make the decision as to if the property will be sold.

## RELATED POLICIES

Financial Hardship Policy

## RELATED LEGISLATION

*Local Government Act 1989*

*Charter of Human Rights & Responsibilities Act 2006*

*Magistrates Court Act 1989*

*Penalty Interest Rates Act 1983*

## REFERENCES

Financial Hardship Application Form

Instrument of (Sub) Delegation by the Chief Executive Officer

