

## 10.5. Amended Financial Hardship Policy

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<b>ENDORSED BY</b>	Luke Harvey, Director Corporate Services
<b>ATTACHMENTS</b>	1. Financial Hardship Policy 2023 [ <b>10.5.1</b> - 4 pages] 2. Debt Recovery Policy 2023 [ <b>10.5.2</b> - 8 pages]
<b>CSP LINK</b>	5. Our Civic Leadership 5.2 Strong civic leadership and customer focussed services

### PURPOSE:

The purpose of this report is to present amendments to Council's *Financial Hardship Policy*, for Council to endorse public exhibition of the amended policy for 42 days, and to seek re-adoption of Council's *Debt Recovery Policy*.

### EXECUTIVE SUMMARY:

- An internal audit of rates conducted in December 2022 identified the need to review Council's *Financial Hardship Policy* to include additional hardship scenarios.
- The Policy has been updated to include reference to Section 567 of the *Local Government Act 1993*, which states that Council may write off accrued interest on rates or charges if, in its opinion, the person is unable to pay the accrued interest for reasons beyond the person's control, or if payment of the accrued interest would cause the person hardship. Public exhibition of the proposed amendments is recommended.
- Payment arrangements are made in accordance with Council's *Debt Recovery Policy*. This policy has also been reviewed, with minor changes recommended. The amendments are not considered significant and, therefore, public exhibition is not required. It is recommended that this policy be readopted.

### RECOMMENDATION:

- 1. THAT** the amended *Financial Hardship Policy* be endorsed for public exhibition for a period of 42 days.
- 2. THAT** a further report be provided to the Council following the conclusion of the public exhibition period, for the purpose of considering any submissions received, and to adopt the amended *Financial Hardship Policy*.
- 3. THAT** the *Debt Recovery Policy* be readopted by Council.

## **Background**

An internal audit of rates conducted in December 2022 identified the need to review the Council's *Financial Hardship Policy and Debt Recovery Policy* to include additional hardship scenarios.

## **Report**

### **Financial Hardship Policy**

This Policy has been updated to include reference to Section 567 of the *Local Government Act 1993*, which states that Council may write off accrued interest on rates or charges if, in its opinion, the person is unable to pay the accrued interest for reasons beyond the person's control, or if payment of the accrued interest would cause the person hardship.

The proposed amendments are marked up in the Policy (Attachment 1), with red font/italics indicating the additions to the Policy. Whilst the amendments are not considered significant, public exhibition of the proposed changes is recommended prior to the policy being re-adopted, in line with Council's corporate policy framework.

### **Debt Recovery Policy**

Payment arrangements under Council's *Financial Hardship Policy* are made in accordance with the *Debt Recovery Policy*.

The *Debt Recovery Policy* was last readopted by Council in 2018. The policy has been reviewed and minor amendments are proposed. In summary, these include:

- addition of definitions for Relationship Manager and Responsible Business Owner; and
- additional provision under 4.1: "Any application for arrangement made under this policy must be in writing. Council's response will also be made in writing."

The amendments (attached) are not considered significant, and therefore public exhibition is not required. It is recommended that this policy be readopted.

Following adoption, the amendments will be assumed, and the policy updated in Council's Corporate Policy Manual.

The proposed amendments are marked up in the attachment, with red font italics indicating additions, and strikethrough indicating deletion.

### **Consultation requirements**

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

## **Financial/Resource Implications**

The financial impact to Council as a result of the amendments to the *Financial Hardship Policy* is considered negligible, as Council receives very few applications.

## **Legislation**

Section 601 of the *Local Government Act 1993* refers to hardship resulting from certain valuation changes:

- 1) A ratepayer who, as a consequence of the making and levying of a rate on a valuation having a later base date than any valuation previously used by a council for the making and levying of a rate, suffers substantial hardship, may apply to the council for relief under this section.*
- 2) The council has a discretion to waive, reduce or defer the payment of the whole, or any part, of the increase in the amount of the rate payable by the ratepayer in such circumstances, for such period and subject to such conditions as it thinks fit.*
- 3) An applicant who is dissatisfied with a council's decision under this section may request the council to review its decision and the council, at its discretion, may do so.*



## FINANCIAL HARDSHIP POLICY

D5-27

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**Policy Owner:** Director Corporate Support

**Category:** Statutory

**Direction:** 5. Our Civic Leadership

### 1. STATEMENT OF INTENT

- 1.1 To cover situations where ratepayers believe that they have suffered financial hardship by way of North Sydney Council utilising a General Revaluation for rating purposes for the first time i.e. hardship caused from the use of new valuations.
- 1.2 To ensure Council complies with Section 601 of the *Local Government Act 1993*.
- 1.3 To fulfil the statutory requirements of the *Local Government Act 1993* with respect to the recovery of rates.

### 2. ELIGIBILITY

- 2.1 This Policy is available to all North Sydney local government area ratepayers of all land categorised as Residential for rating purposes, subject to ~~a number of~~ the limitations as disclosed in Sections 3 and 4 of this Policy.
- 2.2 Section 601 of the *Local Government Act 1993* is only applicable in the first year of the using of valuations for rating purposes following the receipt of a General Revaluation.
- 2.3 Under, Section 567 of the *Local Government Act 1993*, the Council may write off accrued interest on rates or charges if in its opinion the person is unable to put the accrued interest for reasons beyond the person's control, or payment of the accrued interest would cause the person hardship.

### 3. DEFINITIONS

- 3.1 Ratepayer - the person liable for payment of the rates of the property for which hardship is being claimed.
- 3.2 Residential categorisation and rating - all land categorised as Residential for rating purposes in accordance with Section 516 of the *Local Government Act 1993*.

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**FINANCIAL HARDSHIP POLICY**

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- 3.3 Principal place of residence - the property that the ratepayer occupies as their sole or dominant residence.
- 3.4 Property ownership - the applicant having been the ratepayer on the property for which the application is being made for a period of not less than ~~10~~ five years.
- 3.5 Mixed developments - those properties subject to a Mixed Development Apportionment Factor (MDAF) furnished to Council by the Valuer General and are rated in accordance with that MDAF as part Residential and part Business. The part of the property that is subject to an MDAF and rated as residential only is to be considered in the calculation of the increase.
- 3.6 Rates payable calculation test - the calculation of the difference between the previous financial year rate amount and the current financial year rate amount, in accordance with the policy as adopted by Council.
- 3.7 Gross household income test - the calculation of gross household income includes ~~in the policy as adopted by Council, and including~~ but ~~is~~ not limited to:
- a) Gross household income from pensions/salaries;
  - b) Investment income;
  - c) Deemed income from assets; and
  - d) Deemed rental from non-owner residents.
- 3.8 'Rate relief' - refers to the 'rates payable' calculation only when it exceeds 5% of the gross household income.
- 3.9 Maximum permissible rate increase - an increase in rates payable by more than the increase allowed for the year by the NSW Office of Local Government.
- 3.10 Calculation methodology - the rates payable for the year must have increased in accordance with Section 3.9 of this Policy and must exceed 5% of the gross household income.

**4. PROVISIONS**

- 4.1 ~~Any relief under Section 601 of the Local Government Act 1993 will only be available to properties that are categorised and rated as "Residential".~~
- 4.2 The property must be the ratepayer's principal place of residence, the ratepayer must only be the owner of one property and the ratepayer must have owned the property (for which the application is being made) for a period of not less than ~~10~~ five years.

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**FINANCIAL HARDSHIP POLICY**

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- 4.3 The residential component of mixed developments can only be considered for the hardship provisions. The income stream from the business is required to be included as gross household income. Business/mixed development properties are excluded from the hardship provisions due to the tax-deductible nature of the rates and other operating expenses.
- 4.4 Applications for relief under this Policy will only be considered if they are received within six months of the posting date of the rates notice in the first year of the use of the General Revaluation for rating purposes.
- 4.5 Applications for relief under this Policy must pass both the 'Rates payable calculation' (Section 3.6 of this Policy) and 'Gross household income' (Section 3.7 of this Policy) tests as well as the other listed 'provisions'.

**5. RESPONSIBILITY/ACCOUNTABILITY**

- 5.1 ~~Council's Financial Services Department is responsible for receiving, processing, and responding to all applications.~~
- 5.2 Council's Manager Financial Operations is responsible for reviewing all processed hardship applications in the first instance; and for reviewing this policy prior to the next general land revaluation with secondary review to be conducted by Council's Chief Financial Officer.
- 5.3 Council's Chief Financial Officer is responsible for reviewing and responding to any complaints.
- 5.4 Council's Manager Financial Operations is responsible for reviewing this policy prior to the next general land revaluation.
- 5.5 The applicant is responsible for providing accurate and timely information to Council.

**6. RELATED POLICIES/DOCUMENTS/LEGISLATION**

The Policy should be read in conjunction with the following Council policies and documents:

- Debt Recovery Policy
- Financial Management Policy
- Long Term Financial Plan

The Policy should be read in conjunction with the following documents/legislation:

- Local Government Act 1993

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Re-adopted by Council [insert date]

**FINANCIAL HARDSHIP POLICY**

<b>Version</b>	<b>Date Approved</b>	<b>Approved by</b>	<b>Resolution No.</b>	<b>Review Date</b>
1	27 June 2005	Council	580	2008/09
2	16 February 2009	Council	61	2012/13
3	18 February 2013	Council	61	2016/17
4	25 June 2018	Council	214	2020/21
5	[insert date]	Council	[insert min. no.]	2024/25

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Re-adopted by Council [insert date]



## DEBT RECOVERY POLICY

D5-21

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**Policy Owner:** Director Corporate Services

**Category:** Strategic

**Direction:** Our Civic Leadership

### 1. STATEMENT OF INTENT

- 1.1 Outline the principles and guidelines that apply to the recovery and management of overdue Rates and Domestic Waste Management Charges and other non-rates debts.
- 1.2 Ensure effective control over debts owed to Council.
- 1.3 Ensure compliance with the relevant parts of the *Local Government Act 1993*, *Local Government (General) Regulation 2005* ~~2005~~ **2021** and other applicable legislation.
- 1.4 Ensure a fair and equitable approach to recovering overdue Rates and Domestic Waste Management Charges and other non-rates debts. Recovery action must be mindful of those suffering genuine financial hardship.

### 2. ELIGIBILITY

- 2.1 The Policy applies to all councillors, staff and agents of Council and to any other entity involved in Council debt recovery.

### 3. DEFINITIONS

- 3.1 *Local Government Act* - Section 562 of the Act governs payment of rates and annual charges, Section 569 of the Act governs liability of the occupier of land and Section 713 of the Act governs the sale of land for overdue rates. Any other act specifically referred to ~~herein~~ will be given its full title.
- 3.2 *Civil Claims Act* - governs that notwithstanding any proceedings against any person for an offence against this Act (whether resulting in a conviction or otherwise) that person shall remain liable to all civil proceedings in like manner as if the proceedings for the offence had not been taken.
- 3.3 Statement of Liquidated Claim - is a claim made for an amount that has been agreed on by the parties or a claim which can be precisely determined by

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operation of law or by the terms and conditions of the agreement made by the parties. Liquidated claim is also termed as liquidated demand.

- 3.4 Notices of Demand - is a demand letter is a formal notice demanding that the person to whom the letter is addressed perform an alleged legal obligation such as rectifying some identified problem, paying a sum of money or acting on a contractual commitment. Most demand letters will include a deadline for action.
- 3.5 Summonses - is a call by an authority to appear, come, or do something.
- 3.6 Writs of Execution - is a court order to a sheriff to enforce a judgment by levying on real or personal property of a judgment debtor to obtain funds to satisfy (pay the winning plaintiff) the judgment amount.
- 3.7 Garnishee order - is a court order that allows ~~you~~ **one** to recover ~~the~~ **a** judgment debt from ~~the other party's~~ **a debtor's** bank account, ~~the other party's~~ **or** wages. **It might also allow recovery from a third party that owes a debt to Council's debtor** ~~or someone else who owes money to the other party.~~
- 3.8 Warrant of Apprehension - is a warrant issued by the Court when a defendant has failed to appear in court on the date stipulated on either the summons or the bail agreement.
- 3.9 Mercantile Agent - is a commercial agent such as a factor or broker, who in the ordinary course of his business has authority to sell goods, to consign goods for sale, to buy goods or to raise money on the security of goods on behalf of ~~his~~ **a** principal.
- 3.10 Eligible Pensioners - for the purpose of determining pensioner concessions is a defined in clause 134 *Local Government (General) Regulation* ~~2005~~ **2021**.
- 3.11 Notices under Section 569 of the *Local Government Act 1993* - a council may serve on an occupier of land a notice of the amount of any rate or charge unpaid in respect of the land or of the amount of any judgment given against a person for any rate or charge unpaid in respect of the land.
- 3.12 ***Relationship Manager - Council staff that has most frequent and direct operational contact with the debtor.***
- 3.13 ***Responsible Business Owner - the Department Manager or team leader of the department or team that administers the service that caused the fees and debts to be raised.***

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#### 4. PROVISIONS

##### 4.1 Rates and Charges

- 4.1.1 Recovery action will be commenced if current rates are not paid by the due date unless arrangements have been made for payment by instalments either pursuant to Section 562 of the *Local Government Act 1993* or by mutual agreement with Council's Revenue Officer when payment of rates would cause hardship.
- 4.1.2 Recovery action will be commenced, prior to 31st August, for the recovery of outstanding rates from previous rating years and the ratepayer has not entered into a mutual agreement with Council's Revenue Officer to reduce the liability.
- 4.1.3 Recovery action may include personal visits, letters, telephone calls, Reminder Notices or Notices of Demand, Summonses, Writs, Garnishee Orders, Section 569 of the *Local Government Act 1993* Notices, Warrant of Apprehension, notices to wind up a company and in extreme circumstances, the sale of land for overdue rates under Section 713 of the *Local Government Act 1993*.
- 4.1.4 Ratepayers who, because of hardship, wish to enter into a mutual agreement with Council to pay rates by instalments, other than Section 562 of the *Local Government Act 1993*, shall supply to Council's Revenue Officer such information as required.
- 4.1.5 When a ratepayer who has made arrangements to pay rates in instalment by mutual agreement with Council's Revenue Officer does not meet their full obligations under the agreement, the agreement is terminated and legal action shall be immediately instituted for the recovery of any outstanding rates.
- 4.1.6 Any agreement entered into with a ratepayer for the payment of outstanding rates other than pursuant to Section 562 of the *Local Government Act 1993*, shall endeavour to ensure that all rates outstanding are fully paid by 31st May of the rating in which the agreement is entered into, and an agreement for payment of outstanding rates shall not extend beyond two years during which time all later levied rates shall be liquidated.
- 4.1.7 Any application for arrangement made under this policy must be in writing. Council's response will also be made in writing.*
- 4.1.8 Eligible pensioners will be required to pay the amounts of rates remaining following any statutory reduction in rates granted under the

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Act. Such amounts remaining may be paid by instalments pursuant to Section 562 of the *Local Government Act 1993* or by part payments provided that the required amount is paid prior to end of year close-off. Council's Revenue Officer will take into account the limited income of eligible pensioners and may enter into a mutual agreement with them for the payment of rates by arrangement but within the rating year in which the rates were levied.

#### 4.2 Actions (Rates and Charges)

- 4.2.1 Action will be commenced after all instalment due dates, and can be taken in either bulk or on an individual assessment basis.
- 4.2.2 An overdue rate notice will be sent to any ratepayer who does not pay their instalment by the relevant due date and whose account has a balance of more than \$20.00 overdue. This notice will allow 7 to 10 days for payment and will advise that if payment is not made further action may be taken by Council.
- 4.2.3 A further letter from Council giving 7 days for payment of the account will be issued if payment has not been received. This letter will also advise of that if payment is not received within the required time further action involving costs may be taken by Council.
- 4.2.4 Following this, if the account is for more than \$600.00 or there are 2 instalments outstanding, whether an individual assessment or multiple assessments in common ownership, the account will be referred to Councils Mercantile Agent/s (Agent). They will then forward a letter giving 14 days for payment of the account.
- 4.2.5 If the account is still outstanding after the fourteen days a Statement of Liquidated Claim (SLC) will be issued on Council's behalf by the Agent. ~~Service of the SLC is then effected~~ **The SLC is then served** by the Agent.
- 4.2.6 If payment is not made within ~~thirty~~ **28** days of service of the SLC, Judgement will then be entered for the debt.
- 4.2.7 Following the entering of Judgement, Council is then able to take further action as prescribed by the *Civil Claims Act 2002* or the *Local Government Act 1993* as required. This may include such things as, but not limited to notice under section 569 of the *Local Government Act 1993*, Writs of Execution, Garnishees, Action to Wind up the Company etc.

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4.2.8 If a property has rates outstanding for more than 5 years Council may take action under Section 713 of the *Local Government Act 1993* to sell the property to recover the outstanding amount.

#### 4.3 Sundry Debtors Accounts Receivable

4.3.1 Monthly statements are to be forwarded to Sundry Debtors. Amounts outstanding for more than 14 days are to be regarded as overdue. The only exception to this is for the Council Parking Stations which will be regarded as overdue when they are outstanding for more than 30 days.

4.3.2 Where amounts are outstanding for more than 30 days, credit may be stopped, and the matter will be referred for action to recover the debt.

4.3.3 Where applicable recovery action is to be taken where amounts are overdue for more than 60 days.

4.3.4 The Relationship Manager or responsible Business Owner will be required to review the overdue account with the Revenue Officer, before any legal recovery and any additional costs are incurred. Every effort should be made to contact the debtor prior to legal proceedings.

4.3.5 Where it is determined, to the satisfaction of the Relationship Manager or responsible Business Owner and the Revenue Officer that a debt is irrecoverable or uneconomical to recover, the debt will be recommended to be written-off. Any debts will be written-off in accordance with the delegated authority determined by Council. Debts written-off under delegated authority, will be reported to Council.

#### 4.4 Actions (Sundry Debtors Accounts Receivable)

4.4.1 Action will be commenced after the outstanding debt has been overdue in excess of Council's standard trading terms for the account category and can be taken in either bulk or on an individual account basis.

4.4.2 The Revenue Officer will send a reminder letter to any customer who does not pay their account in accordance with Council's trading terms and is overdue for more than 7 days. This letter will allow 7 to 10 days for payment and will advise that if payment is not made further action may be taken by Council.

4.4.3 The manager of the relevant department where the debt originated from will be advised and will be required to authorise any legal recovery proceedings.

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**DEBT RECOVERY POLICY**

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- 4.4.4 Wherever possible, the preferred course of debt recovery action is to negotiate an alternative payment arrangement. If the agreed payment arrangement is dishonoured, legal recovery action may commence without further notice.
  - 4.4.5 If the account is for more than \$1,000.00, whether an individual account or multiple accounts in common name, the account will be referred to Councils Mercantile Agent/s (Agent). They will then forward a letter giving 14 days for payment of the account.
  - 4.4.6 If the account is still outstanding after the fourteen days a Statement of Liquidated Claim (SLC) will be issued on Councils behalf by the Agent. ~~Service of the SLC is then effected~~ *The SLC is then served* by the Agent.
  - 4.4.7 If payment is not made within ~~thirty~~ *28* days of service of the SLC, Judgement will then be entered for the debt.
  - 4.4.8 Following the entering of Judgement, Council is then able to take further action as prescribed by the *Civil Claims Act 2002* or the *Local Government Act 1993* as required. This may include such things as, but not limited to, Writs of Execution, Garnishees, Action to Wind up the Company etc.

**4.5 Register Debts**

- 4.5.1 A register generated tax invoice prepared by the Relationship Manager or responsible Business Owner is sent to the customer immediately after application or service delivery.
- 4.5.2 Where amounts are outstanding for more than 30 days, credit may be stopped, and the matter will be referred for action to recover the debt.
- 4.5.3 Where applicable recovery action is to be taken where amounts are overdue for more than 60 days.
- 4.5.4 The Relationship Manager or Responsible Business Owner will be required to review the overdue account with the Revenue Officer, before any legal recovery and any additional costs are incurred. Every effort should be made to contact the debtor prior to legal proceedings.
- 4.5.5 Where it is determined, to the satisfaction of the Relationship Manager or responsible Business Owner and the Revenue Officer that a debt is irrecoverable or uneconomical to recover, the debt will be recommended to be written-off. Any debts will be written-off in accordance with the delegated authority determined by Council. Debts written-off under delegated authority, will be reported to Council.

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#### 4.6 Actions (Register Debts)

- 4.6.1 Action will be commenced after the outstanding debt has been overdue in excess of Council's standard trading terms for the account category and can be taken in either bulk or on an individual account basis.
- 4.6.2 The Relationship Manager or Responsible Business Owner will send a reminder letter to any customer who does not pay their account in accordance with Council's trading terms and is overdue for more than 7 days. This letter will allow 7 to 10 days for payment and will advise that if payment is not made further action involving costs maybe be taken by Council.
- 4.6.3 The Relationship Managers or Responsible Business Owners are required to regularly meet with the Revenue Officer and review all outstanding register debts. These meetings will be organised by the Revenue Officer at a time that is suitable for both them and the Relationship Managers or Responsible Business Owners. There needs to be agreement that the debt is economically recoverable before commencement of any legal recovery proceedings.

### 5. RESPONSIBILITY/ACCOUNTABILITY

- 5.1 Council's Manager Revenue Services is responsible for receiving, processing and responding to all matters associated with Council rates and sundry debtors, including all legal recovery proceedings.
- 5.2 The Relationship Managers or Responsible Business Owners are responsible for receiving, processing and responding to all matters associated with Council's register debts.
- 5.3 The Relationship Managers or Responsible Business Owners and the Revenue Officer are responsible reviewing and recommending legal recovery of all register debts.
- 5.4 Any engagement with a debt recovery agent or consultant will be carried out by the Revenue Officer. The Revenue Officer can request assistance as to history of the debt from the Responsible Business Owners but ~~essentially~~ once a debt recovery agent or consultant has been engaged with the debt will be managed by Council's Revenue Officer.
- 5.5 The General Manager is authorised to write off debts for amounts as per Delegation of authority.

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## 6. RELATED POLICIES/DOCUMENTS/LEGISLATION

The Policy should be read in conjunction with the following Council policies and documents:

- Financial Management Policy
- Financial Hardship Policy
- Delegation of Authority Manual
- Revenue Policy

The Policy should be read in conjunction with the following documents/legislation:

- Civil Claims Act 2002
- Local Government Act 1993
- Local Government (General) Regulation 2021

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1	25 June 2018	Council	214	2020/21
2	[insert date]	Council	[insert min. no.]	2024/25

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