

 Adelaide Plains Council	Rates Arrears and Debtor Management Policy	
	Version Adoption by Council: 26 April 2022 Resolution Number: 2022/094 Current Version: V3	
	Administered by: General Manager – Finance and Business	Last Review Date: 2022 Next Review Date: 2024
Document No: D22/1046	Strategic Outcome: Proactive Leadership Strategic and sustainable financial management	

1. Objective

The purpose of this Policy is to:

- a) Provide a clear and concise framework in which to recover all outstanding Council debts (rates, infringement and sundry debtors) owed to the Adelaide Plains Council;
- b) Ensure consistency, fairness, integrity and confidentiality for both the Council and the debtor; and
- c) Assist in the efficient management of Council assets through the timely collection of outstanding monies.

2. Scope

This Policy will apply to all rateable assessments, infringements and sundry debtors for monies owed to the Adelaide Plains Council.

3. Policy Statement

3.1 The management and recovery of outstanding revenue is an important aspect of Council's financial management function. The principles that will apply in the management and recovery of overdue debt are as follows:

- a) Council has a responsibility to recover monies owing to it in a timely and efficient manner to finance its operations and ensure effective cash flow management;
- b) Council will operate effective and consistent billing and debt collection processes;
- c) Council aims to minimise the amount of outstanding monies that it is owed;
- d) Debtors are expected to take responsibility for their Council debt obligations and to organise their affairs in such a way as to be able to discharge these obligations when required;

- e) If a debtor cannot meet their obligations on the due dates, it is in the interests of the debtor to contact Council at the earliest opportunity to make appropriate arrangements to address the debt;
- f) In cases of financial hardship Council will consider deferment of payment and/or a suitable repayment plan;
- g) Staff will maintain procedures to support the administration of this policy, including the monitoring of compliance with associated internal controls.
- h) Council will not issue a letter of demand to a debtor without taking all reasonable steps to establish a payment arrangement or negotiate settlement of the outstanding debt.
- i) Once a letter of demand has been issued legal action can proceed and any settlement negotiations will be made on a “without prejudice” basis so that the legal right to collect the debt is not compromised.

3.2 An explicit set of policies and procedures is a necessary tool for sound financial management providing the following benefits:

- a) Public accountability and transparency – Policies and procedures publicly document the Council’s position on which it will base its decisions. They demonstrate the Council’s commitment to sound financial management and establish transparency for audit purposes;
- b) Ensuring a considered approach – The formal adoption of carefully documented policies and procedures helps ensure that the Council’s position on each issue has been properly considered, having regard to alternative approaches and the wider policy and statutory context;
- c) Consistency of decision making – By adopting clear Council policies and procedures a consistent basis for decision-making over time is established. While the Council can make a decision contrary to its adopted policy, it needs a deliberate decision to do so which helps to ensure that proper consideration has been applied;
- d) Clear guidance for staff – Explicit policies and procedures set out the required approach, responsibilities and processes for staff to properly administer the financial business of the Council in accordance with its wishes and consistent with statutory requirements and sound financial management practices. This in turn protects staff from allegations of financial mismanagement as long as the policies and procedures are followed.

3.3 Council Rates

Rates Debtors shall include all those owing general rates, separate rates, differential rates, CWMS service charges, waste service charge amounts, including sundry debts linked to a rateable property where applicable) and any other fines and interest levied by the Council and issued on a quarterly rate notice.

3.3.1 Payment Plans

If a ratepayer is experiencing difficulties meeting rates payments on time and are experiencing financial hardship, a payment plan can be organised with the ratepayer by the Rates Officer. However, all payment arrangements/plans shall be determined on the merits of each individual case. Recovery action for overdue rates will be suspended whilst the terms/conditions of the payment plan are being met.

Each payment plan shall specify the amounts of each regular payment and the dates by which each payment must be made to Council. Payments under a plan should be of regular amounts and be payable at regular intervals.

All payments plans can be approved by the Rates Officer or the equivalent delegate.

If ratepayer fails to honour the payment plan or contact Council, the arrangement may be terminated and the full amount of the outstanding rates and charges and accrued interest shall be due and payable immediately. A maximum of three defaults applies for any one financial year. Further action may be taken for recovery of the amount due through Council debt collection agency without further notice to the ratepayer.

3.3.2 Fines & Interest

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

- a) will be regarded as being in arrears;
- b) will incur a fine of 2% as prescribed under Section 181(8)(b) of the *Local Government Act 1999* (the Act) per cent of the amount of the instalment, applied immediately after the due date of the instalment; and
- c) on the expiration of each full month from that date, will incur interest at the prescribed percentage as per the Act of the amount in arrears (including the amount of any previous unpaid fine and including interest from any previous month).

3.3.3 Overdue Notice

A Rates Overdue Notice shall be issued within 14 days after the due date of an instalment to those ratepayers who have not made a satisfactory payment plan. This Overdue Notice gives the ratepayer their total outstanding debt (including any fines and interest) and detailing options of paying, or making suitable a payment arrangement.

3.3.4 Final Demand

A Final Demand shall be issued 14 days after the issue of the Overdue Notice to those ratepayers who have not made payment or negotiated a satisfactory payment plan. This Final Notice gives the ratepayer their total outstanding debt and the option of paying, or making suitable payment arrangements. The Final Demand will also advise the ratepayer that failure to pay or make a suitable arrangement to pay will result in the debt being referred to Council's Debt Collection Agency for recovery.

3.3.5 Legal Action

Council's Debt Collection Agency will send a Letter of Demand to the ratepayer to pay the amount due in 21 days. Council is then to be guided by the Collection agency as to the most suitable form of recovery action. Debt Collection Agency may initiate a legal action only with approval from General Manager – Finance and Business, if the debt remains unpaid after 21 days.

Once the debt has been referred to the Debt Collection Agency all communication is to be directed to them. All legal costs and expenses incurred by the Council for the recovery of outstanding rates and charges will be charged against the ratepayer's property.

3.3.6 Registered Mortgagee

Once the legal action process in Clause 3.3.5 has been exhausted and before any other legal action in terms of Section 184 of The Act has commenced:

- a) a copy of the Certificate of Title for the property is to be obtained
- b) Council will advise the ratepayer in writing of the debt outstanding & inform that the Council will contact the mortgagee in relation to the overdue rates; and
- c) a copy of the above letter will be sent to the Registered Mortgagee to establish the option of refinancing or paying the arrears outstanding.

If the registered mortgagee advises that they are not willing to pay the overdue rates then the sale of land for unpaid rates and charges under Section 184 of the Act may begin.

3.3.7 Remission and postponement of payment

Under Section 184A of the Act, rate payers who hold a State Seniors Card are able to apply to Council to postpone payment of Council rates on their principal place of residence provided they satisfy the conditions stated under Section 184A of the Act. Any such applications will be considered by General Manager – Finance and Business or the Rates Officer.

3.3.8 Sale of Land for Unpaid Rates and Charges

Council may proceed to sell the land where any rate or charge is overdue and has remained in arrears for more than three (3) years from the date on which it became payable in accordance with Section 184 of the Act.

In agreement with the General Manager – Finance and Business, the Rates Officer may from time to time report to Council on any rate debts that have remained unpaid following implementation of recovery action as detailed above and seek direction from Council as to the implementation of Section 184 of the Act.

3.3.9 Deceased Estates

Where Council rates on deceased estates are not paid by the due date, the appropriate fines in accordance with the *Local Government Act 1999*, shall apply. In the event that the executor can show proof of financial hardship, the application for waiving of fines will be considered by the General Manager – Finance and Business.

3.4 Infringement Debtors

If fines on expiation notices are not paid on time, without further notice, the outstanding amount will be referred to the Fines Enforcement and Recovery Unit for collection. Any overdue fines will attract additional fees as determined by the respective act that impose the fines and infringement.

3.5 Sundry Debtors

Sundry Debtors include people owing Council money for food inspections, on-charging of utilities, recurring charges or any other monies owed to Council. Council will carry out private works only after the payment of estimated cost of the service. The final invoice will be issued for private works, if the actual cost is more than the estimated cost of the private works.

3.5.1 Invoices

Invoices will be sent for any debt raised providing 30 days for payment.

3.5.2 Monthly statement

A monthly Statement shall be issued at the beginning of each month. The Statement provides the debtor with a summary of the debt outstanding at the end of the prior month.

3.5.3 First Reminder

If the debt is outstanding for more than 30 days, monthly Statement with a “friendly reminder – your account is overdue” sticker will be sent or phone call will be made.

3.5.4 Payment Plans

All payments plans shall be approved by the Rates Officer or the equivalent delegate based on the merits of each individual case. Recovery action for overdue debts will be suspended whilst the terms/conditions of the payment plan are being met.

3.5.5 Final Notice

If the debt is outstanding for more than 60 days, a monthly statement with a final notice sticker shall be issued requesting payment within 07 days to those debtors who have not made satisfactory payment arrangements. If Council receives no response from the debtor for

the final notice, it may refer the debt to Council's Debt Collection Agency for recovery without further notice to the debtor.

3.5.6 Legal Action

Legal action will be initiated by referring the account to Council's Debt Collection Agency which will send a letter of demand to the ratepayer requesting the payment within 21 days. Council is then to be guided by the Collection Agency as to the most suitable form of recovery action.

Once the debt has been referred to the Debt Collection Agency all communication is to be directed to them. All legal costs and expenses incurred by Council from the recovery of outstanding debts may be charged to the Debtor and against the Debtor's property if applicable.

4. Writing off bad debts

4.1 In accordance with Section 143 of the *Local Government Act 1999*, a council may write off any debts owed to the council if:

- a) the council has no reasonable prospect of recovering the debts; or
- b) the costs of recovery are likely to equal or exceed the amount to be recovered.

4.2 A council must not write off a debt unless the Chief Executive Officer (CEO) has certified:

- a) that reasonable attempts have been made to recover the debt; or
- b) that the costs of recovery are likely to equal or exceed the amount to be recovered.

4.3 The debts are only to be written off in exceptional circumstances where the following applies:

- a) It is not economical to pursue the debt further, or
- b) The debt was raised in error and is not legally enforceable, or
- c) The debt cannot be proved, or
- d) The debtor cannot be located, or
- e) Upon advice from a solicitor and/ or collection agent that the debt cannot be pursued.

4.4 Under the delegation of power, General Manager – Finance and Business can write off debts up to \$500. In addition, the CEO is the delegated authority under Section 143 of the *Local Government Act 1999* to approve debt write offs up to a maximum of \$1,000. Any debt write off exceeding \$1,000 must be approved by Council.

4.5 For each case when a debt is written off details of the debt recovery action undertaken and the circumstances as to why the debt cannot be recovered must be documented and maintained on file. The CEO will review and certify that all appropriate action has been taken prior to approving the write off of the debt and the amount written off will be reported to the Council via the Quarterly Budget Review Report

5. Related Documents

Section 143 and 144 of the *Local Government Act 1999* provides Council with the statutory right to recover fees, charges, expenses or other amounts from a person, by action in a court of competent jurisdiction or to write off a debt.

In addition, following sections of the *Local Government Act 1999* are also applicable.

Section 44 - Delegations

Section 181 - Payment of rates – general principles

Section 182 - Remission and postponement of payment

Section 182A - Postponement of rates – Seniors

Section 184 - Sale of Land for non-payment of rates

6. Further Information

The Policy is available for inspection during ordinary business hours at the Council principal office, 2a Wasleys Road, Mallala or on Council's website www.apc.sa.gov.au.

A printed copy of this policy may be obtained on payment of a fee.

Any queries in relation to this Policy must be in writing and directed to the General Manager – Finance and Business.