

General Policy

Burke Shire Council

Debt Recovery Policy



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1. Purpose

The purpose of this policy is to guide the administration process to be used in the collection of overdue rates, charges and debts.

The management and recovery of outstanding revenue is an important aspect of Council's financial management function and needs to conform to the following objectives;

- Ensure a fair, consistent and accountable approach to BSC debt management and collection practice
- Recognise the importance that debt recovery has on the capacity of BSC to deliver services to the community
- Maximise the collection of outstanding debts
- Establish timelines of communications and debt collection itself, which will deliver consistency of service; and
- Maximise the cost effectiveness of collection processes.

When pursuing the collection of overdue rates or charges Council will have due concern for any financial hardship faced by ratepayers and will allow appropriate time to pay overdue rates where financial difficulty is identified.

2. Scope

This policy applies to outstanding rates and charges and sundry debtor accounts, due to Council.

3. Date of Policy

This Policy applies from date adopted by Council.

4. Definitions

Chief Executive Officer	shall mean the person appointed to the position of Chief Executive Officer under the Act and anyone acting in that position.
Council	shall mean the Burke Shire Council
Debtor	shall mean any person or other legal entity, including a ratepayer, who owes money to Council.
Rates and charges	are as defined in s91 of the Local Government Act 2009. Without limiting the detail of the legislation, in general, rates and charges are levies that a local government imposes on land and for a service, facility or activity that is supplied or undertaken by the local government or someone on behalf of the local government.

Overdue rates and charges	are defined in s132 of the Local Government Regulation 2012. Without limiting the detail of the legislation, in general overdue rates and charges are rates and charges that are not paid by the due date for payment stated in the rate notice. The rates or charges become overdue on the day after the due date for payment of the rates or charges.
The Act	shall mean the Queensland Local Government Act 2009.
The Regulation	shall mean the Local Government Regulation 2012.

5. Policy Provisions

Safeguarding Council's and Community's Interests

The Chief Executive Officer or delegate may direct that recovery action for any debt be conducted in a way that differs from the processes set out in this Policy when that is considered to be in the Council's or the community's best interest.

Nothing in this policy binds the Council to precisely follow any process set out in this policy, and a failure to follow any process does not change or relieve a debtor's obligation to pay a debt when due.

Principles

This policy is guided by the following principles:

- Council has the responsibility to manage financial resources and ensure the recovery of debts owed to Council, including overdue rates, charges and interest and to establish debt management procedures for the effective collection of receivables and the recovery of outstanding debts, including deferment and alternative payment arrangement;
- When recovering debts owed to Council the recovery processes will be as clear and cost effective as possible;
- Be transparent with ratepayers and other debtors regarding their payment obligations and the processes used by Council to assist them to meet those obligations;
- Consider each debtors capacity to pay, while endeavoring to treat debtors consistently;
- Demonstrate flexibility when necessary, in responding to changes in the local economy; and
- Equity –by treating all ratepayers in similar circumstances in the same way.

6. Rates and Charges

In accordance with Council's Revenue Policy and Revenue Statement, rates and charges are due and payable within 30 days after the date of issue of the Rate Notice.

Reminder Notices

Council will forward a reminder notice after the close of the 30-day discount period to all property owners with overdue rates (except property owners where rate payment arrangements have been negotiated).

The reminder notice will give the ratepayer twenty-one (21) days to either:

- Pay the outstanding amount in full; or
- To negotiate an acceptable repayment plan

Letters of Demand

Should the ratepayer fail to pay the outstanding balance or contact Council and negotiate an alternative arrangement within the twenty-one (21) day period, a "Letter of Demand" will be issued. This letter will allow the ratepayer fourteen (14) days to pay the outstanding balance in full or negotiate a suitable payment plan with Council.

As soon as practicable following the expiration of the fourteen (14) days Demand Notice any ratepayer who:

- Has not responded by way of payment in full; or
- Has not entered into an acceptable arrangement to pay off the overdue account; or
- Has defaulted on their agreed payment arrangements;

Shall have their debt referred to an appropriate debt collection agency or Council's solicitors for recovery action.

Where overdue rates and/or charges have been referred to Council's debt collection agency or solicitor, an initial letter of demand will be issued, direct contact attempted to be undertaken, and other debt collection activities taken in order to secure payment of the debt. At this stage it will still be possible for ratepayers to enter into a payment arrangement which may be approved on a case-by-case basis at Council's sole discretion.

Once the files are sent to Council's collection agency, all contact and payment arrangements made are to be dealt with by Council's collection agency or solicitor.

Financial Hardship

Ratepayers may apply for rate relief based on hardship supported by relevant documentation as outlined in FIN-POL-017 Financial Hardship Policy.

Legal Action

Legal action is seen as a last resort to enforce debt collection. However, such action will be taken following previously mentioned initial recovery processes. All recoverable costs, as part of all debt recovery processes, will be passed on to the ratepayer.

Where the probability of successful recovery of an outstanding debt is low, particularly in relation to debts where past legal action has not resulted in repayment of the outstanding debts, Council may elect not to proceed with further legal action and consider alternate collection action and strategies.

Claim and Statement of Claim

If no returned mail is received by Council or its debt collection agents, it will be assumed that the correspondence has been received. Legal action will be commenced if the account remains unpaid or an approved payment schedule is not made with the collection agency.

Ratepayers with an individual or combined balance over \$1,000 will be subject to the issue of a Claim and Statement of Claim in the appropriate court. At this stage, the debtor will incur legal costs that are recoverable with the debt.

Once the Statement of Claim is served, Council must wait 28 days for the defendant to pay the account or enter into a payment commitment.

Pre-Judgement Letter

Pre-Judgement Letters are issued to those accounts that have had a Claim issued and served upon them and either:

- Have made no contact or failed to abide by a payment commitment after being served with the Claim; and/or
- Seven days have passed after the 28-day waiting period after service of claim has expired.

Default Judgement

Default judgements are issued in court against those ratepayers who have not responded to the pre-judgement warning letter or have failed to abide by payment commitments from the pre judgement warning letter.

Once filed with the court and approved, judgment may affect the debtor's credit history file for a period of five (5) years.

Post Judgement Warning Letter

Post Judgement Warning Letters are issued to rate payers automatically after default judgment orders are received back from the court. The rate payer is provided with 14 days to either pay the judgement amount or contact the debt collection office for a payment commitment.

Enforcement of Default Judgement

Council can elect to enforce the judgement debt through the bailiff or court examination of the rate payer or elect to hold account until three years to proceed to sale of residential property, or until one year to proceed to sale of vacant land or land used solely for commercial purposes.

Properties with a Payment Plan

If there is a current payment plan in place, Council will commence legal action if:

- The ratepayer has not fully complied with the terms of the agreed payment plan; and
- The ratepayer has \$1,000.00 or more in rates (or charges) owing to Council.

Legal action may be temporarily suspended if the debtor enters into a payment plan satisfactory to

Council, which includes the provision for the payment of legal costs.

Sale of Land – Residential

Where rates and charges remain unpaid for three years and no approved payment plan exists, Council may, by resolution, commence proceedings to sell the property subject to and by virtue of its powers under the Local Government Act 2009 and Regulations.

Sale of Land – Vacant Land and Commercial Property

Where rates and charges remain unpaid on vacant land or land used solely for commercial purpose for one year or more and no approved payment plan exists and judgment has been obtained, Council may, upon resolution, and by virtue of its powers under the Local Government Act 2009 and Regulations, commence proceedings to sell the property.

In recognition of individual privacy, and to ensure all ratepayers are treated consistently, the list of properties on which Council is required to resolve to commence land sale for rates and/or charges recovery in accordance with this policy, is to be presented identifying the property number, property location, and real property description only.

Costs

Council will attempt to recover all legal costs incurred with the recovery action of rates and charges from the ratepayer which, may if required, include Council making an application to the court to formalise a costs order.

Once formal recovery action has been commenced it will not be discontinued until the amount of the claim and any further interest levied in accordance with the Local Government Act 2009 has been paid in full.

Legal action may be temporarily suspended if the debtor enters into a payment plan satisfactory to Council which includes the provision for the payment of legal costs.

Agreed Payment Plan

Council may grant a payment plan for the payment of rates and charges. There is no limitation of the scope of the payment plan that can be provided by the Act. However, due to practical and economic reasons, Council has determined that the arrears, including any additional charges applied in return for Council agreeing to defer payment of rates or charges, should be sufficient to service rates arising in the current financial period, plus a minimum of 20% of the rates in arrears.

A financial period represents a half year from 1 July 2022 – 31 December 2022 or 1 January 2023 – 30 June 2023.

All payment plans will be confirmed in writing. Failure to meet the agreed payments will result in the cancellation of the payment plan. A broken payment plan letter will be forwarded to the ratepayer upon cancellation of the agreed payment plan. The broken payment plan letter should allow the ratepayer at least 7 days in which to bring the payment plan back into order. In particular circumstances, legal recovery action may commence immediately in the event of default by the ratepayer.

Pensioners

Council recognises that Pensioners as a class may face financial difficulties in meeting their obligations, however, as specific concessions are provided to them, pensioners with arrears are encouraged to take advantage of payment schedules that will ensure that the balance in arrears does not escalate beyond their means. As such, all pensioners who fall into arrears will be subject to Council's usual recovery action for overdue rates, in accordance with this policy.

7. Sundry Debtors

Statements are issued the first working day of the start of the month or upon request to the Burke Shire Council Finance Department.

A reminder letter will be issued to the debtor 14 days after the issue of the statement at the end of the month. This reminder letter requires payment to be made within fourteen (14) days.

A Letter of Demand may be issued 30 days after the first statement issued. This letter requires payment to be made with seven (7) days.

Where payment is not received, the account may be referred to the nominated debt collection agency or to initiate solicitor recovery action.

Initial Recovery Action

As soon as practicable, following the expiration of the due date of the Letter of Demand, any Sundry Debtor who:

- has a balance over \$500; or
- has not entered into an approved payment arrangement; or
- does not have their account on hold; or
- has defaulted on their agreed payment arrangement

may be forwarded to Council's debt collection agency or solicitor. Debt recovery action shall include an initial seven (7) day letter of demand, telephone contact where possible, followed by a final seven (7) day solicitor's demand letter. The letters issued will explain the possible financial impact if Council proceeds to legal action, including an estimate of legal costs.

Legal Action

Legal action is seen as a last resort to enforce collection and will be undertaken if the debtor fails to respond to the contact made by Council or its representatives, following the issue of the previously mentioned correspondence.

The decision as to whether the amount outstanding warrants the use of further legal action for recovery and the appropriate level of legal action to be taken rests with the Finance and Technology Manager.

Payment Arrangements

Council may approve an arrangement with an individual debtor, and all payment arrangements will be confirmed in writing. Failure to meet the agreed payments may result in the cancellation of the payment plan and referral to Council's debt collection agent.

8. Bad Debts / Write Offs

Where it is determined, to the satisfaction of the Finance and Technology Manager that a debt is irrecoverable or uneconomical to recover, the debt may be written off. Any debts will be written off in accordance with the appropriate delegated authority as noted in section 9 of this policy.

Sundry Debts

A debt that meets any two of the following criteria:

- All reasonable collection action has been taken and was unsuccessful
- No possibility for collection exists now or in the future
- 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.

Rates and Charges

Where the property description of the land no longer exists and meets any two of the following criteria:

- All reasonable collection action has been taken and was unsuccessful
- No possibility for collection exists now or in the future
- 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.

9. Delegation of Authority

The following delegations are only to be used when administration adjustments and/or corrections are to be made for rates and charges, interest, lost discount and legal costs or other accounts receivable per customer as a bad debt.

- Council Resolution required for amounts over \$1,000
- Chief Executive Officer amounts of up to \$1,000
- Finance and Technology Manager amounts up to \$100

10. Key Responsibilities

Position	Responsibility
Mayor	To lead councillors in their understanding of, and compliance with, this policy.
Councillors	To understand and comply, where relevant, with this policy.
CEO	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with, this policy.
Directors	To communicate, implement and comply with this policy.
Managers and Supervisors	To implement this policy and related procedures.
All Council staff	To comply with this policy and consider its implications for related projects and programs.

11. Related Documents

Legislation/Regulations	Awards	BSC Policies	Procedures
Local Government Act 2009 Local Government Regulations 2012 Magistrates Courts Act 1921		Revenue Statement	

12. Appendix

Appendix 12.1: Summary of Rating Debt Recovery Process

Burke Shire Council - Rate Debt Recovery Process		
Steps	Action	Further comment
Step 1 - Reminder notice	Council will forward a reminder notice after the close of the 30-day discount period to all property owners with overdue rates. 21 days to pay in full or negotiate an acceptable repayment plan	Except property owners where rate payment arrangements have been negotiated.
Step 2 - Letter of Demand	Should the ratepayer fail to pay the outstanding balance or contact Council and negotiate an alternative arrangement within the twenty-one (21) day period, a "Letter of Demand" will be issued.	<p>As soon as practicable following the expiration of the fourteen (14) days Demand Notice any ratepayer who:</p> <ul style="list-style-type: none"> - Has not responded by way of payment in full; or - Has not entered into an acceptable arrangement to pay off the overdue account; or - Has defaulted on their agreed payment arrangements; <p>Shall have their debt referred to an appropriate debt collection agency or Council's solicitors for recovery action.</p> <p>Where overdue rates and/or charges have been referred to Council's debt collection agency or solicitor, an initial letter of demand will be issued, direct contact attempted to be undertaken, and other debt collection activities taken in order to secure payment of the debt. At this stage it will still be possible for ratepayers to enter into a payment arrangement which may be approved on a case by-case basis at Council's sole discretion.</p> <p>Once the files are sent to Council's collection agency, all contact and payment arrangements made are to be dealt with by Council's collection agency or solicitor.</p>
Step 3 - Claim of Statement of Claim	If no returned mail is received by Council or its debt collection agents, it will be assumed that the correspondence has been received. Legal action will be commenced if the account remains unpaid or an approved payment schedule is not made with the collection agency.	Ratepayers with an individual or combined balance over \$1,000 will be subject to the issue of a Claim and Statement of Claim in the appropriate court. At this stage, the debtor will incur legal costs that are recoverable with the debt.

		Once the Statement of Claim is served, Council must wait 28 days for the defendant to pay the account or enter into a payment commitment.
Step 4 - Pre judgement Letter	Pre-Judgement Letters are issued to those accounts that have had a Claim issued and served upon them and either: <ul style="list-style-type: none"> • Have made no contact or failed to abide by a payment commitment after being served with the Claim; and/or • Seven days have passed after the 28-day waiting period after service of claim has expired. 	
Step 5 - Default Judgement.	Default judgements are issued in court against those ratepayers who have not responded to the pre-judgement warning letter or have failed to abide by payment commitments from the pre-judgement warning letter.	Once filed with the court and approved, judgment may affect the debtor's credit history file for a period of five (5) years.
Step 6 - Post Judgement warning letter	Post Judgement Warning Letters are issued to rate payers automatically after default judgment orders are received back from the court.	The rate payer is provided with 14 days to either pay the judgement amount or contact the debt collection office for a payment commitment.
Step 7 - Enforcement of Default Judgement	Council can elect to enforce the judgement debt through the bailiff or court examination of the ratepayer or elect to hold account until three years to proceed to sale of residential property, or until one year to proceed to sale of vacant land or land used solely for commercial purposes	
Step 8 - Sale of land - Residential	Where rates and charges remain unpaid for three years and no approved payment plan exists, Council may, by resolution, commence proceedings to sell the property subject to and by virtue of its powers under the Local Government Act 2009 and Regulations	
Step 8 - Sale of land - Vacant Land and Commercial Property	Where rates and charges remain unpaid on vacant land or land used solely for commercial purpose for one year or more and no approved payment plan exists and judgment has been obtained, Council may, upon resolution, and by virtue of its powers under the Local Government Act 2009 and Regulations, commence proceedings to sell the property.	In recognition of individual privacy, and to ensure all ratepayers are treated consistently, the list of properties on which Council is required to resolve to commence land sale for rates and/or charges recovery in accordance with this policy, is to be presented identifying the property number, property location, and real property description only.