

<u>POLICY NUMBER</u>	- 3.2
POLICY SUBJECT of Rates and Service Charges	- 3.2 Rates Recovery - Agreement for Payment
ADOPTED	- 5 September 2000 (CMRef27632)
REVIEWED	- 15 January 2008 (CMRef29330)
REVIEWED	- 20 July 2010 (CMRef 30377)
REVIEWED	- 19 February 2013 (CMRef 31058)
REVISED	

ASSOCIATED LEGISLATION: *Local Government Act 1995 – Sections 6.13, 6.45, 6.51, 6.56, 6.60, 6.64.*
Local Government (Financial Management) Regulations 1996
Rates and Charges (Rebates and Deferments) Act 1992

ASSOCIATED DOCUMENTS:

REVIEW

RESPONSIBILITY: Executive Manager of Corporate Services

DELEGATION: LGA 30 Rates and Service Charges - Agreements LGA32
 Rating and Service Charges–Caveat
 LGA33 Rating and Service Charges, Legal Action for
 Recovery
 LGA31 Rates, Unpaid – Power for Sale
 LGA 34 Recovery of Rates and Service Charges – Leased
 Properties

PART A

Objective:

To set out a clear, equitable, accountable and transparent process for the Shire of Merredin (the Shire) to follow in the management and collection of rates and sundry debtors. The policy will ensure proper records are maintained for debts owed to the

Shire as required by the *Local Government Act 1995* and *Local Government (Financial Management) Regulations 1996* and that collection actions are managed in a consistent and equitable manner.

Policy :

The Shire is committed to ensuring that it manages its cash flows in a manner that provides financial sustainability to the organisation.

It will ensure that the collection of all rates and sundry debts are:

- being managed fairly and equitably;
- in accordance with the *Local Government Act 1995*, *Civil Judgements Enforcement Act 2004*, this Policy and any associated business operating procedures;
- undertaken with upmost respect, courtesy and diligence in dealings with all debtors; and
- treated with strict confidentiality.

In cases where the owner of a leased or rented property on which rates are outstanding cannot be located after all reasonable efforts and avenues have been exhausted, or refuses to settle rates owed, or defaults on alternative payment arrangement, notice will be served on lessee under the provisions of section 6.60 of the *LGA* without the need for Council endorsement, requiring the lessee to pay to the Shire the rent due under the lease/tenancy agreement as it becomes due, until the amount in arrears has been fully paid.

A Property Sale and Seizure Order (PSSO) on a debtor's goods may proceed without the need for Council endorsement. If a PSSO on a debtor's goods fails to identify sufficient freehold goods for seizure by a court-appointed Bailiff and the rates remained unpaid for at least 3 years, then a PSSO on a debtor's land may only proceed following approval from Council.

If any rates or service charges which are due in respect of any rateable land have been unpaid for at least 3 years, where all attempts to recover money due have failed, and after all reasonable efforts and avenues to locate the owner have been exhausted, approval shall be sought from Council for issue of a PSSO against land in order to:

- lease the land;
- have the land transferred to the Shire; and
- sell the land.

The above actions will be reported on a confidential basis to the Council for approval.

PART B

Management Procedure Purpose

To ensure all rates and sundry debts are managed fairly, equitably, and in a transparent and consistent manner. All debtors will be shown the utmost respect, and courtesy in dealings with the Shire, with all debt collection arrangements being treated in a strictly confidential manner.

Definitions :

For purposes of this Policy and Management Procedures, the following definitions apply:

The Act	Means the <i>Local Government Act 1995</i> .
The Regulations	Means the <i>Local Government (Financial Management) Regulations 1996</i> .
Debt	Means an amount of money owed to the Shire by a debtor because of a transaction or rates and service charges (including emergency services levy) levied by the Shire.
Debtor	Means any individual, corporation, organisation or other entity owing money to the Shire.
Risk	Means the possibility of non-payment of a debt by the debtor when the amount is due. The likelihood of non-payment increases with the age of the debt.
Write Off	Means the accounting procedure for cancelling a debt that is no longer collectible resulting in its removal by Council from the Shire's statement of financial position (balance sheet).
Rates and Service Charges	Rates and Service Charges are a charge on land imposed under the Act.
Alternative Payment Arrangement	An agreement made between the ratepayer and the Shire to pay rates or service charges at a timing and frequency other than the prescribed instalment due dates. Alternate payments frequencies can only be weekly, fortnightly or monthly. It is required that the full outstanding balance of the account, plus any interest accruing, be cleared before the 4 th Instalment deadline of the current financial year. Payment arrangement requests shall be made in writing directly to the local government.
General Procedure Claim (GPC)	A GPC is issued through the Magistrates Court for debts up to an amount determined by the Chief Executive Officer (CEO).
Property Sales and Seizure Order (PSSO)	A PSSO authorises a bailiff to seize and sell as much of the judgment debtor's real or personal property as necessary to satisfy the judgment debt wholly or partially.
Real Property (Land)	Assets that are fixed permanently in one location such as land and/or buildings.

Personal Property (Goods)	Assets that are movable and not fixed permanently in one location such as vehicles and other possessions.
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1. Debt Recovery Process - Rates

The following process is to be followed for the recovery of rates and service charges. Legal proceedings will continue until outstanding rates and service charges are paid in full or otherwise determined by the CEO and/or the Council.

1.1 Final Notice – 14 Days after Rate Notice due date

Where a ratepayer has not paid the amount due or entered into a payment arrangement 14 days after the due date shown on the Rate Notice, a Final Notice shall be issued, requesting full payment within 14 days or the option to enter into a payment arrangement.

Although eligible pensioners registered under the Rates and Charges (Rebates and Deferments Act) 1992 are entitled to pay Rates by the 30th June under the legislation, Final notice will be sent, as charges for waste/recycling services, swimming pool inspection fee and ESL are payable as per due dates.

1.2 Contact by Phone or Email

Where amounts remain outstanding, three attempts to contact the ratepayer will be made by telephone and email (where provided). If no details are on file with the Shire, the Rates Officer will attempt to contact utilities providers and potential other leads (such as builders of planning consultants from applications or correspondence received at the Shire).

1.3 Notice of Intended Legal Action Letter – 14 Days after Final Notice issue date

If payment has not been made, Rates Officers will issue a Notice of Intended Legal Action letter to the ratepayer, demanding immediate payment.

1.4 Contact by Phone or Email – 7 Days after Notice of Intended Legal Action Letter issue date

Seven (7) days after the Notice of Intended Legal Action letter is issued, attempt to contact the ratepayer will be made requesting payment for the outstanding balance. Where possible, the mortgagee of the property may be contacted to rectify the breach of non-payment of rates with their client.

1.5 Letter of Demand issued by Debt Recovery Agent - 14 Days after Notice Of Intended Legal Action issue date

Where a ratepayer has not paid the amount due or not entered into a payment arrangement 14 days after the issue of a Final Notice, a Letter of Demand shall be issued by the Shire's Debt Recovery Agent requesting full payment within 7 days or the option to enter into a payment arrangement.

1.6 General Procedure Claim (GPC) – 14 Days after Letter of Demand issued by Debt Recovery Agent

Where a ratepayer has not paid the amount due or not entered into a payment arrangement 14 days after Letter of Demand was issued by Debt Recovery Agent, a GPC will be issued for recovery of the debt through Council's Debt Recovery Agent. For debts outstanding over \$10,000 the Shire may refer the debt to a debt collection agency for a General Procedure Claim (GPC) and Court proceedings to commence.

For debts outstanding under \$10,000 a Minor Case Claim may be lodged by the Shire. Should there be no response to the claim with fourteen (14) days if served with Western Australia or twenty one (21) days if served within another State or Territory of Australia, default judgement can be entered into at the Magistrates Court.

Legal costs and the costs of proceedings will be added to the ratepayers account upon issue of a GPC in accordance with Section 6.56 of the *Local Government Act 1995 (LGA)*.

Ratepayers are required to pay in full or by instalments including the legal costs. If they choose to pay by instalments, they must sign the "Admission of Claim" on the reverse of the GPC and state the amount they agree to pay for each instalment. The discharge of overdue rates through an "Admission of Claim" will be considered upon payment in full or by an acceptable payment arrangement, including the legal costs. A debtor will be required to clear the debt by 30th June of the current financial year, unless agreed otherwise. Judgment is entered by the Court upon an Admission of Claim.

1.7 Property Sale and Seizure Order (PSSO) on Goods and Land– 14 Days after GPC has been served

Should a GPC be lodged and there is no response to the GPC within fourteen (14) days of issuing the claim, default judgement can be entered into at the Magistrates Court and a Property Seizure and Sale Order (PSSO) will be lodged at the Magistrates Court at the same time and served by an appropriate process server.

- i. The PSSO authorizes the Bailiff to seize and sell as much of the debtor's real or personal property as necessary to satisfy the debt wholly.
- ii. Where a PSSO involves the seizure of land a report to Council will be submitted for endorsement prior to the seizure of land.

Where a GPC has been served and remains unsatisfied, recovery action will continue through the Council's debt recovery agent to pursue recovery of the debt plus legal costs in accordance with this policy and relevant provisions of LGA. This includes the issue of a PSSO – against a ratepayer's goods and, if GPC cannot be served due to inability to locate the ratepayer, a PSSO on a ratepayer's land.

A PSSO on a debtor's goods may proceed, in the first instance, 14 days after GPC has been served without the need for Council endorsement.

If a PSSO on a debtor's goods fails to identify sufficient freehold goods for seizure by a court-appointed Bailiff and the rates remained unpaid for at least 3 years, then a PSSO on a debtor's land may only proceed following approval from Council.

1.8 PSSO on Land – For Unpaid Rates and Service Charges for at Least 3 Years

If any rates or service charges which are due in respect of any rateable land have

been unpaid for at least 3 years, where all attempts to recover money due have failed, and after all reasonable efforts and avenues to locate the owner have been exhausted, approval shall be sought from Council for issue of a PSSO against land in order to:

- lease the land;
- have the land transferred to the Shire; and
- sell the land.

The above actions will be reported on a confidential basis to the Council for approval.

1.9 Discontinuance of further legal action

I. Notice of Discontinuance/Memorandum of Consent

If it happens that a course of legal action that is lodged with the Magistrates Court was lodged in error by the Shire, a Notice of Discontinuance or Memorandum of Consent, whichever is appropriate, will be prepared and lodged at the Magistrates Court at the Shire's expense.

If the debt has been settled with the Shire, a Notice of Discontinuance or Memorandum of Consent may be prepared on request. An administration fee as per the Shire's adopted Fees and Charges will be charged and must be paid in full prior to the Notice of Discontinuance or Memorandum of Consent being released by the Shire.

II. The Shire will not proceed with further legal action if the debt has been settled in full or an approved arrangement to clear the debt has been entered into and adhered to.

2. Alternative Payment Arrangement - Rates

If the instalment due dates indicated on the rate notice are not suitable, ratepayers may request for an Alternative/Direct Debit Payment Arrangement which can be a weekly, fortnightly or monthly repayments. Any payment arrangements must be agreed upon in writing by both the ratepayer and Shire and applicable fees as determined by the Shire from time to time shall apply. Interest shall continue to accrue on the outstanding rates until fully paid. Approval of payment arrangements is at the discretion of Shire and will consider all relevant factors and circumstances of the account.

If a ratepayer defaults on an approved payment arrangement, the debt recovery process shall resume from the stage prior to the establishment of the Alternative/Direct Debit Payment without any further notice (e.g. default in payment arrangement after receipt of Final Notice shall be issued a GPC) or proceed with alternate recovery methods like Section 6.60).

3. Section 6.60 - Local Government May Require Lessee to Pay Rent

In cases where the owner of a leased or rented property on which rates are outstanding cannot be located after all reasonable efforts and avenues have been

exhausted, or refuses to settle rates owed, or defaults on alternative payment arrangement, notice will be served on lessee under the provisions of section 6.60 of the LGA, requiring the lessee to pay to the Shire the rent due under the lease/tenancy agreement as it becomes due, until the amount in arrears has been fully paid.

In exercising Section 6.60 of the LGA:

1. A letter is sent to the owner of the property at the last known place of contact. This letter advises of the rates outstanding and the intention to issue an order on the tenant to pay any rent due under the lease or rental agreement if the account is not settled within 14 days.
2. If the payment is not received from the owner, the tenant is issued with an order under Section 6.60 of the LGA. This order requires that any rent payable under the terms of the lease in respect of the land is paid to the Shire and not the owner.
3. The tenant must continue to pay any rent due in respect of the land to the Shire until the amount of rates outstanding is settled.
4. The Shire will notify the tenant when the outstanding rates have been satisfied by the rent paid by the tenant or by receipt from the owner and rescind the order made under Section 6.60.

4. Section 6.64 - Actions to Be Taken - Caveats

The Chief Executive Officer may lodge a caveat to preclude dealings in land where rates or services charges are in arrears and the CEO is of the opinion that it is in the interests of the Shire to lodge the caveat.

5. Debts Other Than Rates and Service Charges

5.1 Sundry debt recovery

The terms of payment for each invoice may vary depending on the goods or service rendered to the debtor. If the invoice is not paid by the due date, the following procedure will take place:

- A letter or Reminder Notice will be issued advising the debtor that if there exists a dispute or query to contact the Shire otherwise payment is expected within fourteen (14) days of the issue date of the letter;
- If no response is received from the debtor, upon recommendation of the appropriate Shire Finance Officer, Demand Notice may be sent to the debtor advising that if payment is not made within fourteen (14) days of the date of the notice, further action may be taken to recover the debt, which could involve legal action. The debtor will be advised that any additional fees incurred in recovering the debt will be passed on to the debtor.
- External party (Debt Collection Agency) will only be engaged to recover an outstanding debt if the action is appropriate for the amount outstanding, given due consideration to all issues which have led to the debt being overdue and not paid.

5.2 Special Payment Arrangements – Sundry

Applicants are required to complete an Application Form for a Sundry Debtors Payment Arrangement, giving information regarding their financial position and provide any additional documentation, verifying the financial position of the applicant(s) to substantiate the information supplied. Following an assessment by the relevant Shire Finance Officer, the Application will be referred to the EMCS for approval.

5.3 Write-Off - Sundry

After all reasonable attempts to either locate the debtor or to obtain payment have failed, or the cost of recovery exceeds the debt amount, the relevant Shire Finance Officer responsible for raising the debt will submit a written request to the Manager Financial Services (MFS) for the invoice to be considered for write off. Approval will be sought from the Chief Executive Officer and subsequently Council (if required) for approval for the debt to be written off.

5.4 Debt Raised in Error or Debt Adjustment

If a debt has been raised in error or requires an adjustment, then an explanation shall be documented and provided by the relevant Shire Finance Officer to the EMCS prior to reversing or correcting the debt raised in error

5.1 Other Action Which Maybe Taken

The following list of actions may also be instituted at the discretion of the Executive Manager of Corporate Services, against defaulting sundry Debtors, who do not respond to normal requests for payment:

- Issue a Letter of Demand;
- Commencement of Court proceedings to recover the outstanding monies;
- Discontinuing performance of any services, hire reservations and/or licences;
- Refusing further services (if applicable);
- Request "up-front" bonds for future dealings with the Shire, which may be used to offset against the outstanding debt;
- Offset any amounts owed by the Shire against any outstanding debt;
- Report to the Council to consider cancellation of a Lease Agreement (if applicable).

6. Interest on Overdue Monies

Interest can be calculated on the total outstanding debt/rates once it has exceeded the due date. The rate of interest imposed is that as determined by the Council as prescribed in the Annual Budget and in accordance with Section 6.13

of the LGA. The decision to write-off interest on sundry debts is at the discretion of the EMCS in accordance with the delegated authority.

Should the ratepayer default in the Alternative/Direct Debit Payment Arrangement where interest is previously waived, the waiving of the interest will cease and interest will be calculated from the date that the rates or debt originally defaulted.