

Late Payment and Sale of Land for Non-Payment of Council Rates Policy



Record number	D22/41653
Responsible Manager	Manager Finance & Rating Operations
Other key internal stakeholders	Director Organisational Services & Excellence Manager Customer & Communications Team Leader Rating & Finance operations
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Legal requirement	NA
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1. PURPOSE

The purpose of this policy is to formally state Council's position in relation to:

- a. Fines / penalties for late payment of rates and the situations in which Council will or will not consider remitting the fines / penalties and charges relating to payments of Council rates
- b. Selling land for non-payment of Council rates and the steps that will be taken prior to selling land to recover rates debts.

2. POLICY

2.1 Late Payment of Council Rates

There will be a grace period of three working days after the due date for payment to allow for the administration functions of processing external agency payments. Late payment penalties will be remitted if payment is received within the grace period.

Fines and/or penalties for late payment of rates may otherwise be waived upon application in writing by any person under the following circumstances:

- a. Financial difficulties due to unemployment or sickness of the principal income earner
- b. Delayed applications for financial assistance through the Department for Communities and Social Inclusion
- c. Accidents, sudden hospitalisation or serious illness
- d. Non-receipt of rates notice
- e. The history of a ratepayer's payment of rates i.e. normally pays by the due date
- f. Financial hardship

Fines and interest will only be remitted once the arrears have been paid in full.

The following reasons are considered as not acceptable and fines / penalties for late payment will not be remitted:

- a. Loss of cheques for payment of rates in the post
- b. Late receipt of payments due to postal delay
- c. Late remittances for payments made by financial institutions on the client's behalf
- d. Absenteeism from the area due to business or vocational purposes
- e. Intentional late payment as an objection for alleged non-receipt of expected services
- f. Simple oversight and no other explanation given.

Council will issue an overdue account for payment of rates when rates are overdue i.e. unpaid by the due date. Should rates remain unpaid for more than 30 days after the issue of an overdue account then Council will refer the debt to a debt collection agency for collection. The debt collection agency will charge collection fees that are recoverable from the ratepayer.

2.2 Sale of Land for Non-Payment of Rates

Council recognises the severe impact that the sale of land can have on an individual property owner and accordingly this action will only be instigated after a series of steps have been completed. This approach will assist in providing that all ratepayers will be treated fairly and equally in regard to the recovery of long-term rates debt. At the same time, the balance of the community should not be required to bear the financial burden of any long term rate debts.

Shortly before a ratepayer's rates debt has been in arrears for two years and again at three years, the ratepayer will be advised in writing of the following:

- a. Council's ability to recover rates via sale of land (without any threat to proceed) and requesting their cooperation by arranged payment of debt and payment options
- b. Outlining the process details relating to section 184 of the Act and action if the rates remain outstanding for over three years
- c. That any interested parties, such as mortgagees, will be notified if an arrangement to clear the debt is not forthcoming
- d. Requesting a response within one month from the date of the letter.

If as a result of the preceding actions, the following will occur for all rate debt in arrears by three years or more and in the instance where the ratepayer has not contacted Council or made any appropriate arrangements to clear the outstanding debt within the required timeframe, the details of the debtor will be forwarded to Council's solicitor for the following action:

- a. A Final Demand for Unpaid Council Rates allowing 14 days to make an arrangement advising that a Notice Requiring Payment of Rates under section 184 of the Act will be issued with no opportunity for an arrangement after this time.

If as a result of issuing the Final Demand for Unpaid Council Rates, the ratepayer does not contact or make appropriate arrangements to clear the outstanding debt within the required timeframe, the following minimum action will be instigated:

- a. A report will be provided to Council
- b. If Council resolves to proceed with sale of land, a Notice Requiring Payment of Rates from Council's solicitor, will be sent to the relevant ratepayer pursuant to section 184(2) of the Act which states:
 1. The period for which the rates have been in arrears
 2. The amount of the total liability for rates presently outstanding in relation to the land
 3. If that amount is not paid by a specified date (which must be at least one month from the date of service of the notice), the Council intends to sell the land to recover the rates.

A copy of this notice will also be sent to the persons required under section 184(3) of the Act including to any owner of the land who is not the principal ratepayer, any registered mortgagee of the land and any holder of a caveat over the land

Elected Members will be advised of the outcome when either the property is sold or the rates debt has been satisfied.

The professional services of Council's debt collector and/or solicitors will be used as required to ensure Council's processes are appropriate and in accordance with the provisions of the Act.

3. DEFINITIONS

For the purposes of this policy the following definitions apply:

Act

Refers to the Local Government Act 1999.

4. LEGISLATIVE FRAMEWORK

4.1 Legislative requirement

There is no legislative requirement for Council to have a policy relating to this area.

The following legislation applies to this Policy:

Local Government Act 1999

Section 181 of this Act provides that Council impose a penalty of 2% on any payment for rates and charges that are received late. A payment that continues to be late is then charged interest until such time as the debt is satisfied. The interest rate is set according to a formula in the Act based on the Cash Advance Debenture Rate for each month it remains outstanding. The purpose of this penalty is to act as a genuine deterrent to ratepayers who might otherwise fail to pay their rates on time, to allow Council to recover the administrative cost of following up unpaid rates and to cover any interest the Council may have lost as a result of not receiving the rates on time.

Section 181 of this Act gives Council the power to remit any late penalties in whole or in part.

Section 184 (see Attachment 1) of this Act provides that a Council may sell any property where the rates have been in arrears for three years or more. The Council is required to notify the owner of the land of its intention to sell the land, provide the owner with details of the outstanding amounts, and advise the owner of its intention to sell the land if payment of the outstanding amount is not received within one month.

4.2 Other references

Council's documents including:

- a. Fees and Charges Register.

5. STRATEGIC PLAN/POLICY

5.1 Organisation Plan

Our Strategic Plan is supported by an Organisation Plan which focuses on five key themes of organisational excellence. The themes most relevant to this report are: People and Leadership; Customers and community relations; Governance; Finance and systems, Continuous improvement

6. POLICY IMPLEMENTATION

This Policy will be implemented by the Chief Executive Officer or relevant portfolio director and managed in accordance with Council's scheme of delegations.

Section 184—Sale of land for non-payment of rates

- (1) If an amount payable by way of rates in respect of land has been in arrears for three years or more, the council may sell the land.
- (2) Before a council sells land in pursuance of this section, it must send a notice to the principal ratepayer at the address appearing in the assessment record—
 - (a) stating the period for which the rates have been in arrears; and
 - (b) stating the amount of the total liability for rates presently outstanding in relation to the land; and
 - (c) stating that if that amount is not paid in full within one month of service of the notice (or such longer time as the council may allow), the council intends to sell the land for non-payment of rates.
- (3) A copy of a notice sent to a principal ratepayer under subsection (2) must be sent—
 - (a) to any owner of the land who is not the principal ratepayer; and
 - (b) to any registered mortgagee of the land; and
 - (ba) to the holder of any caveat over the land; and
 - (c) if the land is held from the Crown under a lease, licence or agreement to purchase—to the Minister who is responsible for the administration of the *Crown Lands Act 1929*.
- (4) If—
 - (a) a council cannot, after making reasonable inquiries, ascertain the name and address of a person to whom a notice is to be sent under subsection (2) or (3); or
 - (b) a council considers that it is unlikely that a notice sent under subsection (2) or (3) would come to the attention of the person to whom it is to be sent,the council may effect service of the notice by—
 - (c) placing a copy of the notice in a newspaper circulating throughout the State; and
 - (d) leaving a copy of the notice in a conspicuous place on the land.
- (5) If the outstanding amount is not paid in full within the time allowed under subsection (2), the council may proceed to have the land sold.
- (6) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the council may set a reserve price for the purposes of the auction).
- (7) The exception under subsection (6) relating to land held from the Crown will not apply if the Minister responsible for the administration of the *Crown Lands Act 1929* grants his or her consent to the sale of land by public auction.
- (8) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating throughout the State.
- (9) If, before the date of such an auction, the outstanding amount and the costs incurred by the council in proceeding under this section are paid to the council, the council must call off the auction.
- (10) If—
 - (a) an auction fails; or
 - (b) an auction is not to be held because the land is held from the Crown under a lease, licence or agreement to purchase,the council may sell the land by private contract for the best price that it can reasonably obtain.

- (11) Any money received by the council in respect of the sale of land under this section will be applied as follows:
- (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
 - (b) secondly—in discharging any liabilities to the council in respect of the land;
 - (c) thirdly—in discharging any liability to the Crown for rates, charges or taxes, or any prescribed liability to the Crown in respect of the land;
 - (d) fourthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
 - (e) fifthly—in discharging any other mortgages, encumbrances and charges of which the council has notice;
 - (f) sixthly—in payment to the owner of the land.
- (12) If the owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (13) If land is sold in pursuance of this section, an instrument of transfer or conveyance (as appropriate) under the council's common seal will, on registration, operate to vest title to the land in the purchaser.
- (14) The title vested in a purchaser under subsection (13) will be free of—
- (a) subject to subsection (14a), all mortgages, charges and caveats; and
 - (b) except in the case of land held from the Crown under lease, licence or agreement to purchase—all leases and licences.
- (15) An instrument of transfer or conveyance in pursuance of a sale under this section must, when lodged with the Registrar-General for registration, be accompanied by a statutory declaration made by the chief executive officer of the council stating that the requirements of this section in relation to the sale of the land have been observed.
- (16) If it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section (or other relevant instrument), the Registrar-General may register a transfer or conveyance despite the non-production of the duplicate (or instrument), but in that event will cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.
- (17) A reference in this section to land or title to land is, in relation to land held from the Crown under lease, licence or agreement for purchase, a reference to the interest of the lessee, licensee or purchaser in the land.
- (18) This section does not authorise the sale of non-rateable land on account of the non-payment of a service charge.
- (19) This section does not apply where the payment of rates has been postponed under, or in accordance with, another provision of this Act (until the postponement ceases to have effect or unless the rates become rates in arrears under the terms of the relevant