

RECOVERY OF OVERDUE RATES AND CHARGES PROCEDURE

OBJECTIVE

Council requires payment of rates and charges within the specified period and has an obligation to diligently recover overdue rates and charges. When pursuing overdue rates and charges, Council will consider the individual circumstances, or the financial hardships faced by some ratepayers.

To cater for this, Council has established balanced administrative processes that allow for some flexibility in ratepayer payment options including payment by regular approved instalments. At the same time, these processes include a variety of options, including legal action, that allow the effective recovery of overdue rates, depending on the level of resistance experienced. At the most severe level, this will include the sale of land by public auction in accordance with the relevant legislative requirements.

DEFINITIONS

Council Banana Shire Council

PROCEDURE

Council will follow the below process to recover overdue rates and charges.

Recovery Action – Council

Where there are rates and charges outstanding greater than \$10.00 and no rates payment commitment is in place, the following actions will be used in the collection of overdue rates and charges.

- a) **Request for Rates Payment Commitment** – Ratepayers will be issued a letter 14 days after the due date for the half yearly rates notice advising the outstanding balance and requesting that rates be paid in full, or an acceptable payment commitment be entered into within 14 days.
- b) **Overdue Rates Notice – Reminder Letter** – Ratepayers who have rates and charges outstanding and no payment arrangement negotiated after 14 days will then be issued an Overdue Rates Reminder Letter. This second letter will advise the outstanding balance and request rates be paid in full or an acceptable payment commitment be entered into within 14 days. It will also advise failure to do so may result in the commencement of recovery action which could incur additional costs.
- c) **Approval for Commencement of Recovery Action** – Properties with rates and charges outstanding greater than \$1,000.00 and no payment arrangement negotiated after 14 days will then be reviewed by the Rates Coordinator, Manager Finance, Director Corporate and Community Services, the Chief Executive Officer, and referred to Council's approved Debt Collection Agency and subject to the following processes.

Recovery Action – Debt Recovery Agent/Law Firm

- a) **Letter of Demand** - A Letter of Demand will be issued by Council's Debt Recovery Agent to the referred accounts, advising the ratepayer that Council may instruct its Agent to commence legal proceedings if the rates and charges in arrears are not paid or a suitable payment commitment is not entered into with Council's Agent within 14 days.
- b) **Statement of Liquidated Claim** - Council will review the accounts that have not complied with the letter of demand after 14 days and provide its Agent with instructions to file the Statement of Liquidated Claim with a nominated Magistrates Court.

The ratepayer will be served with a Statement of Liquidated Claim and advised they have 28 days to pay or make a suitable payment commitment for the outstanding amount, including all legal costs associated with the claim and the consequences of not responding.

- c) **Pre-Judgement Letter** – Council will review the accounts that have not responded to the Statement of Liquidated Claim within the 28 days and provide its Agent with instructions to issue a Pre-Judgement letter.

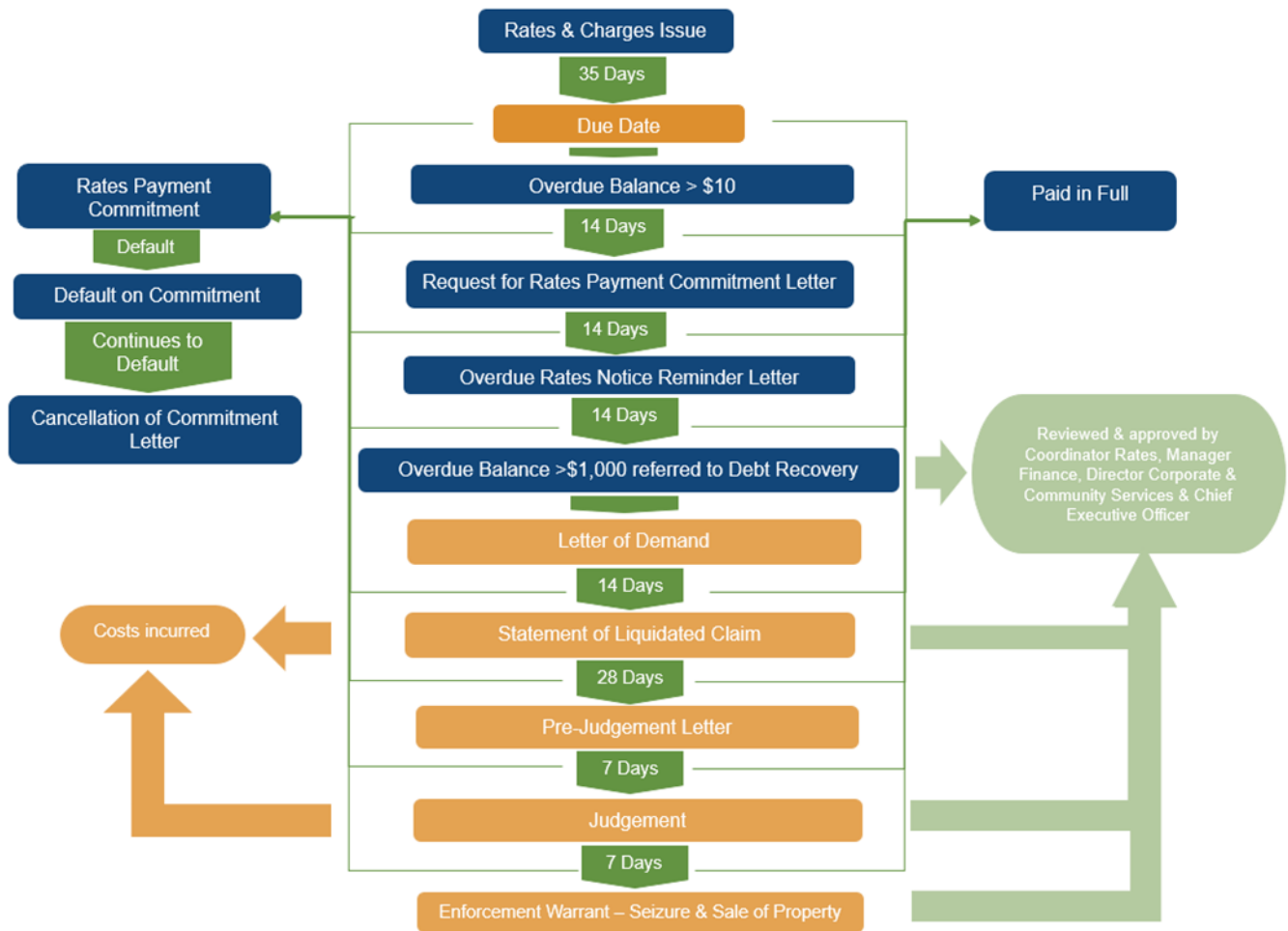
The Pre-Judgement letter will advise the ratepayer they have 7 days to pay or make a suitable payment commitment for the outstanding amount, including all legal costs and the consequences of having a default Judgement entered against them.

- d) **Judgement** – Council will review the accounts that have failed to respond to the Pre-Judgement Letter within the 7 days and provide its Agent with instructions to proceed to apply to the court for default Judgement.

Once Judgement has been entered a Post-Judgement letter will be issued to the ratepayer informing that Judgement has been entered by default against them in favour of Council for the sum of the outstanding rates and charges, plus additional professional costs incurred in proceeding to Judgement. The letter will also notify that if they fail to contact Council within 7 days, or do not make payment, or do not make a suitable payment commitment for the outstanding amount, including all legal costs, then enforcement action will be taken.

- e) **Enforcement Warrant – Seizure and Sale of Property** - Council will review the accounts that have failed to respond to Judgement within the 7 days and provide its Agent with instructions to issue an Enforcement Warrant.

A warrant of seizure and sale authorises an enforcement officer to enter private property and seize and sell the debtor's real and personal property by public auction. The auction proceeds are applied to the judgement debt and associated expenses, less any existing mortgage or charge.



Sale of Land

In accordance with chapter 4, part 12, division 3, of the *Local Government Regulation 2012*, Council has the ability to instigate sale proceedings where rates or charges remain outstanding beyond set periods of time.

The periods are:

- three (3) months if the rates or charges were levied on a mining claim.
- one (1) year for vacant land and land used only for commercial purposes where Council has obtained judgement for the overdue rates of charges; and
- three (3) years for all other land.

At least once every financial year the rates accounts will be analysed to identify properties eligible for sale of land for rate arrears under the provisions of the *Local Government Regulation 2012*.

Ratepayers with properties identified for sale under these provisions will be advised that they have twenty-eight (28) days to pay the outstanding rates or enter a suitable payment commitment. Interested parties listed on the current Certificate of Title for the property will also be advised. Failure to respond will result in Council resolving to proceed with sale of land action.

If Council resolves to sell a property for arrears of rates and charges, the process will be carried out in accordance with the provisions of section 140 of the *Local Government Regulation 2012*.

Acquisition of Land

In accordance with chapter 4, part 12, division 3, of the *Local Government Regulation 2012* Council has the ability to instigate acquisition proceedings where rates or charges remain outstanding beyond three (3) years and either of the following applies -

- i) the total of the overdue rates or charges is more than the value of the land and the land is considered to be –
 - a) valueless; or
 - b) of so little value that, if it were sold, the proceeds of the sale would be less than the amount of the overdue rates or charges.
- ii) the total amount of the overdue rates or charges is more than the market value of the land.

Ratepayers with properties identified for acquisition under these provisions will be advised that they have twenty-eight (28) days to pay the outstanding rates or enter into a suitable payment commitment. Interested parties listed on the current Certificate of Title for the property will also be advised. Failure to respond will result in Council resolving to proceed to acquire the property.

If Council resolves to acquire a property for arrears of rates and charges, the process will be carried out in accordance with the provisions of section 140 of the *Local Government Regulation 2012*.

Rates Payment Commitment

A ratepayer may apply for a commitment in writing or verbally with a Rates and Property Officer if they are unable to pay rates and charges in full by the due date. Discount will be forfeited for the period and interest will continue to accrue until all rates and charges are paid in full.

Rates Payment Commitment applications will be assessed on the following terms.

- a) Rates outstanding current period only – payments should be of a sufficient amount and regularity to clear the outstanding amount before the issue of the next rate notice.
- b) Rates outstanding including previous rating period/s – these commitments may allow for payments over an extended period no greater than two (2) years and must include estimates of any future levies.
- c) Ratepayer in financial hardship - the application for a commitment should outline all relevant circumstances so that consideration may be given to accepting a commitment. These commitments may allow for payments over an extended period no greater than two (2) years and must include estimates of any future levies.

The applicant will be advised in writing if the commitment application has been approved, or if Council requires an increase to the proposed commitment amount.

Council will not pursue or escalate recovery action against a property owner who has an agreed periodic payment commitment, where the arrangement is current, and the ratepayer adheres to the agreed repayment schedule.

In the event that a Rates Payment Commitment is not maintained within the agreed terms, the ratepayer will be issued a Default on Commitment letter requesting the commitment be brought up to date. If the ratepayer fails to comply, Council will issue a Cancellation of Commitment letter advising them the commitment has been cancelled and recovery action may commence.

CERTIFICATION



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CHIEF EXECUTIVE OFFICER
BANANA SHIRE COUNCIL

27 March 2025

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DATE