



# Mackenzie District Council

## Debt Recovery Policy

<b>STATUS:</b>	ADOPTED
<b>VERSION:</b>	20210629
<b>POLICY OWNER:</b>	GM Corporate Services
<b>POLICY APPROVER / S:</b>	Chief Executive Officer, Mackenzie District Council
<b>DATE:</b>	2021-06-29

“Fostering Our Community”

## DEBT RECOVERY POLICY

<b>Purpose</b>	<p>This policy formalises a consistent approach for Mackenzie District Council to manage the collection of revenue in a legally compliant manner.</p> <p>While intended primarily for Finance staff, this policy also provides other Council employees and the public with an understanding of the purpose and principles to be applied in recovering debt.</p>
<b>Key Points</b>	<p>Council is committed to providing an equitable and transparent approach to manage debt that is owed to Council.</p> <p>The objective of this policy is to ensure that debts are collected promptly, efficiently, and consistently.</p>
<b>Date of Issue</b>	Adopted by Resolution at Council Meeting 29 <sup>th</sup> June, 2021
<b>File Retention</b>	Mackenzie District Council Laserfiche – Policies section
<b>Review</b>	Every two years at the anniversary date

## RELATED DOCUMENTS / WEBSITES

Related Council policies and documents include:

- Remission and Postponement of Rates Policy
- Privacy Policy
- Conflict of Interest Policy
- Schedule of Fees and Charges
- Compliance Enforcement Policy
- MDC Bylaws

Relevant legislation and other resources include (but are not limited to):

- Local Government Act 2002 and the Local Government Act Amendment Act 2014
- Local Government Rating Act 2002
- Building Act 2004
- Summary Proceedings Act 1957

## 1. Scope

This policy applies to all Council revenue streams, including:

- Rates and water rates
- Other revenues, including but not limited to:
  - property licences,
  - rent payments from community housing,

- resource management fees,
- building consent fees,
- animal impound fees,
- interim bin charges,
- hall hire,
- interment fees,
- airport landing fees.

Infringements are covered under the Summary Proceedings Act 1957 and are excluded from this policy. Collection of infringement revenue is managed by the District Court.

While this Policy provides guidance for recovery of debt according to the scope above, it is important to distinguish between debts within General and Water Rates and other debt. The Local Government Rating Act 2002 provides specific measures to recover unpaid rates that are not available for recover of other debts to Council.

In accordance with Section 221 of the Building Act 2004, Council may seek to recover costs from a property owner for remedial work Council carries out when there is a default, in relation to a dangerous/insanitary building. Where a cost remains unpaid after debt recovery processes have occurred, Council may place a charge on the land and/or a lien or caveat may be added to the certificate of title.

It is also important to note the Building Act 2004 allows Council to transfer debt in relation to a Code of Compliance, to another party (i.e., from a contractor to the property owner).

## **2. Background**

Council requires significant levels of income to provide an extensive range of services to the community and it receives this income from various parties including ratepayers, residents, and businesses.

This income is received through different methods such as general rates, targeted water rates, user charges, consent fees, licence fees, statutory charges, grants and subsidies. To assist in delivering services effectively and efficiently, Council should receive this income in a timely manner to meet the costs of providing these services.

This policy provides a transparent and equitable approach to managing debt and formally outlines this approach to the collection of arrears.

## **3. Policy**

In the process of managing debt in accordance with this policy, Council employees and contractors will, at all times, respect the privacy of individuals and communicate in a courteous and professional manner.

At the same time, staff have the right to terminate conversations with any ratepayer or customer who becomes abusive or threatening.

The key principle of this policy is that where legally possible, Council will seek to recover any costs associated with the collection of arrears from the relevant customer/ratepayer.

### 3.1 Set-off

In circumstances where a person makes an overpayment to Council or is due a refund, and that same person also owes money to the Council, settlement of the outstanding debt may be by set off where the debtor has agreed so in writing.

### 3.2 Application of Interest Charges

Council does not apply any interest charges on any overdue invoices.

### 3.3 Application of Penalties

In accordance with section 57 and 58 of the Act, Council can apply penalties to rates and water rates that are not paid by the due date. A Council resolution is made in June each year establishing the penalties.

### 3.4 Restriction of Supply

Council may restrict water supply to customers with outstanding arrears in accordance with section 193 of the Local Government Act 2002, section 69S of the Health Act 1956 and Council's Water Supply Bylaw 2017.

If Council chooses, by formal resolution, to charge excess water usage rates, debt recovery options may include the issuing of defect notices and/or restriction of supply. Policy guidance for this would be established via a separate policy.

#### **Other debt**

Council may restrict provision of services to customers with outstanding arrears where it is not restricted by legislation.

### 3.5 Collection via demand on mortgagee

Where an owner defaults in paying rates and/or water rates (including metered water charges if applicable) on a property with a mortgage, Council may recover the arrears from the first mortgagee in accordance with section 62(1) of the Act.

Council staff will notify both the owner and the mortgagee of Council's intention to issue a formal demand to the mortgagee for payment of rates and/or water rates arrears, this typically occurs in August.

Formal demand for payment from the mortgagee will be issued no earlier than legislatively possible (currently 1 November of the financial year following the year in which the rates were first assessed).

A flowchart outlining the rates recovery process is included as **Appendix A – Rates Arrears Recovery Process**.

### 3.6 Collection via rating sale or lease

If Council or a recovery agency have no success in recovering the rates and/or water rates arrears (including metered water charges if applicable) on properties without mortgage, then legal action may commence, and a rating sale or lease is possible under section 67(1) of the Act.

Council may proceed with legal action to collect rates and/or water rates arrears no later than 30 June of the year following when the rates became overdue. The first steps in the legal process are to lodge a statement of claim, followed by seeking judgement from the Court for rates and/or water rates arrears.

Where judgement does not result in payment of rates and/or water rates arrears, Council officers will notify Council via a confidential report for their information, of the intention to progress to rating sale. Generally, this will occur approximately 24 months after first commencing legal action.

Where a property is sold via rating sale or lease, and the proceeds received are insufficient to cover the full arrears and the associated costs, as prescribed in section 75 of the Act, any outstanding arrears will be written off.

A flow chart outlining the rating sale process is included as **Appendix B – Rating Sale Process**.

### **3.7 Rates collection via abandoned land sale or lease**

With regard to unpaid rates (including unpaid water rates and metered water charges as applicable), Section 77(1) of the Act permits Council to progress an abandoned land claim where:

1. Council or its representative have had no success in locating a property owner; and
2. No rates and/or water rates payments have been received for at least three years

In these instances, Council may apply to the Court to have the land/property declared as abandoned. Alternatively, property owners may give written notice to Council that they intend to abandon the land/property (voluntary abandonment).

Staff will notify Council via a confidential report, of the intention to pursue declaration as abandoned land.

Where a property is sold via abandoned land sale or lease, and the proceeds received are insufficient to cover the full rates arrears and the associated costs, as prescribed in section 82 of the Act, any outstanding arrears will be written off.

A flow chart outlining the abandoned land process is included as **Appendix C – Abandoned Land Rating Sale**.

### **3.8 Bad Debt write-off**

Where a property is sold via rating or abandoned land sale or lease, and the proceeds received are insufficient to cover the full rates arrears and the associated costs as prescribed in section 75 and 82 of the Act, any outstanding arrears will be written off.

Council staff will also consider write-off of rates/water rates arrears in accordance with the Remission and Postponement of Rates Policy.

Debts will only be written off when all reasonable attempts to recover outstanding amounts have been made (by both the Council and external recovery agencies), or the costs of recovery are likely to equal or exceed the amount to be recovered.

The named officers and the financial delegation thresholds contained in the Delegations Manual will be applied when approving the write-off of an existing debt.

All debt under \$50 more than 120 days past due will be written off without progressing to external recovery agencies.

Writing off a debt and any associated debt recovery or legal costs will be charged to the activity where the invoice was originally raised.

### **3.9 Process to recover Non-Rates debt**

Note that this section does not apply to collection of rates debts (including water charges) as these are largely controlled by the provisions of the Local Government (Rating) Act 2002 and described in the preceding sections.

The Policy principle is that overdue debts are collected promptly, efficiently and consistently while allowing some flexibility within the policy to allow for differing circumstances of debtors.

The key steps in the process to recover these debts are summarised as follows. A flowchart outlining the debt recovery process is included as **Appendix C – Non-Rates Arrears Recovery Process**.

- Follow up of overdue debt should commence within 28 days of the debt becoming overdue. This will be by telephone, email, letter or any other form of communication considered appropriate to the circumstances.
- If payment is not received in response to an initial approach by Council employees, further communication may take place except that once the debt remains unpaid for two months after the end of the month in which the debt is incurred, a formal letter advising legal or other action will take place must be sent within 14 days. (This letter should allow seven days for payment before the stated action is taken.)
- Management in their discretion may use any method legally available to Council to collect overdue debt and can include the use of agencies such as solicitors, debt collection companies, and Tribunals.
- Council delegates authority to the Chief Executive to take all steps required to recover any debt including legal action but excluding High Court action. Any sub delegations will follow the authorisation in the Delegations Manual.
- Council officers with the appropriate delegated authority from the Chief Executive as authorised in the Delegations Manual may enter into “arrangements to pay” with any debtor at their discretion if this becomes the preferred method of ensuring payment and avoids unnecessary hardship to the debtor.
- Any debts of a non-regulatory nature may be written off by an officer with delegated authority if, in their view, the costs of collection outweigh the value of the debt. Any such write-offs are to be reported to the Audit Committee at their first meeting following the end of the financial year.
- The Chief Executive only, may authorise mediation, if the value of the debt and the complexity of the issues are considered large enough to warrant the cost involved.
- Council officers will at all times respect the privacy of individuals and communicate in a courteous and professional manner. At the same time, staff have the right to terminate conversations with any debtor who becomes abusive or threatening.

## **4. Payment Arrangements**

Payment arrangements for rates and water rates arrears are at the discretion of Council and are typically cleared by 30 June of the current rating year in which the arrangement is made. However, if a ratepayer includes the current year's rates with their rates arrears when making a payment arrangement, Council may extend the payment arrangement for up to 24 months.

### **Sundry debts**

Payment arrangements for sundry debts are at the discretion of Council and should be fully repaid within 120 days of the invoice date.

### **General**

Payment arrangements more than the periods set in this policy require approval in accordance with the delegations outlined in this policy.

## **5. Principles**

The regulatory enforcement role in New Zealand has clearly established guidelines and principles. Mackenzie District Council will apply and adhere to these principles when carrying out debt recovery activities.

- **Transparency**  
We will provide clear information and explanation to the community, and those being regulated, about the standards and requirements for compliance. We will ensure that the community has access to information about relevant changes to legislation as well as actions taken by us to address non-compliance.
- **Collaboration**  
We will work with and, where possible, share information with other regulators and stakeholders to ensure the best compliance outcomes for our region. We will engage with the community, those we regulate and government to explain and promote compliance requirements and achieve better community outcomes.
- **Consistency of Process**  
Our actions will be consistent with the legislation and within our powers. Compliance and enforcement outcomes will be consistent and predictable for similar circumstances. We will ensure that our employees have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.
- **Lawful, Ethical and Accountable**  
We will conduct ourselves lawfully and impartially and in accordance with these principles and relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.
- **Fair, Reasonable and Proportional Approach**  
We will apply interventions and actions appropriate for the situation. We will use our discretion justifiably and ensure our decisions are appropriate to the circumstances, and that our interventions and actions will be proportionate to the seriousness of the non-compliance.
- **Targeted**  
We will focus on the most important issues and problems to achieve the best outcomes. We will target our intervention at the activities that pose the greatest risk. We will apply the right tool for the right problem at the right time.
- **Evidence-based, Informed**  
We will use an evidence-based approach to our decision making. Our decisions will be informed by a range of sources.
- **Responsive and Effective**  
We will consider all alleged non-compliances to determine the necessary interventions and action to minimise impacts on the environment and the community and maximise deterrence.

We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

## 6. Conflicts of Interest

Mackenzie District Council will carry out all debt recovery functions in accordance with the Conflict-of-Interest Policy to:

- Create a framework for decision making that avoids actual or perceived conflict of interest
- Minimise the risks where a conflict of interest exists
- Ensure staff are free from any personal, commercial, financial, political, or other pressures that might affect their actual or perceived ability to make independent decisions.

This policy provides guidance for Council employees as to where a conflict of interest may arise (and therefore how to avoid a conflict of interest) and a mechanism for ensuring that any actual or potential conflict of interest is disclosed and managed appropriately.

## 7. Definitions

**Act:** This refers to the Local Government Act (Rating) Act 2002

**Debt:** The amount of money owed by a debtor as a result of a transaction with Council.

**Debtor:** Any individual, corporation, or organisation or other entity owing money to Council.

**Write-off:** The accounting process for cancelling debt that is no longer collectable is a cost to Council.

**Doubtful debt:** A debt that is considered uncollectable.

**Provision for doubtful debts:** The accounting procedure for recognising the estimated value of debts that may end up being uncollectable.

**Default:** Where a Council approved payment arrangement is in place and payments are not made as agreed by the ratepayer or debtor

**Payment arrangement:** A requested alternative arrangement for payment of the debt, outside the terms on the invoice. Council provides written acceptance of the arrangement.

**Recover agency:** An external party appointed by Council to recover funds that are past due or in default. Council may elect to use an internal resource to fulfil these duties if appropriate.

**Set-off (netting):** In law, set-off or netting are legal techniques applied between persons or businesses with mutual rights and liabilities, replacing gross positions with net positions. It permits the rights to be used to discharge the liabilities where cross claims exist between a plaintiff and a respondent, the result being that the gross claims of mutual debt produce a single net claim. The net claim is known as a net position. In other words, a set-off is the right of a debtor to balance mutual debts with a creditor.

## 8. Clarification and Breaches

### 8.1 Clarification

Clarification regarding this policy can be sought from the Mackenzie District Council General Manager Corporate Services.

### **8.2 Breaches**

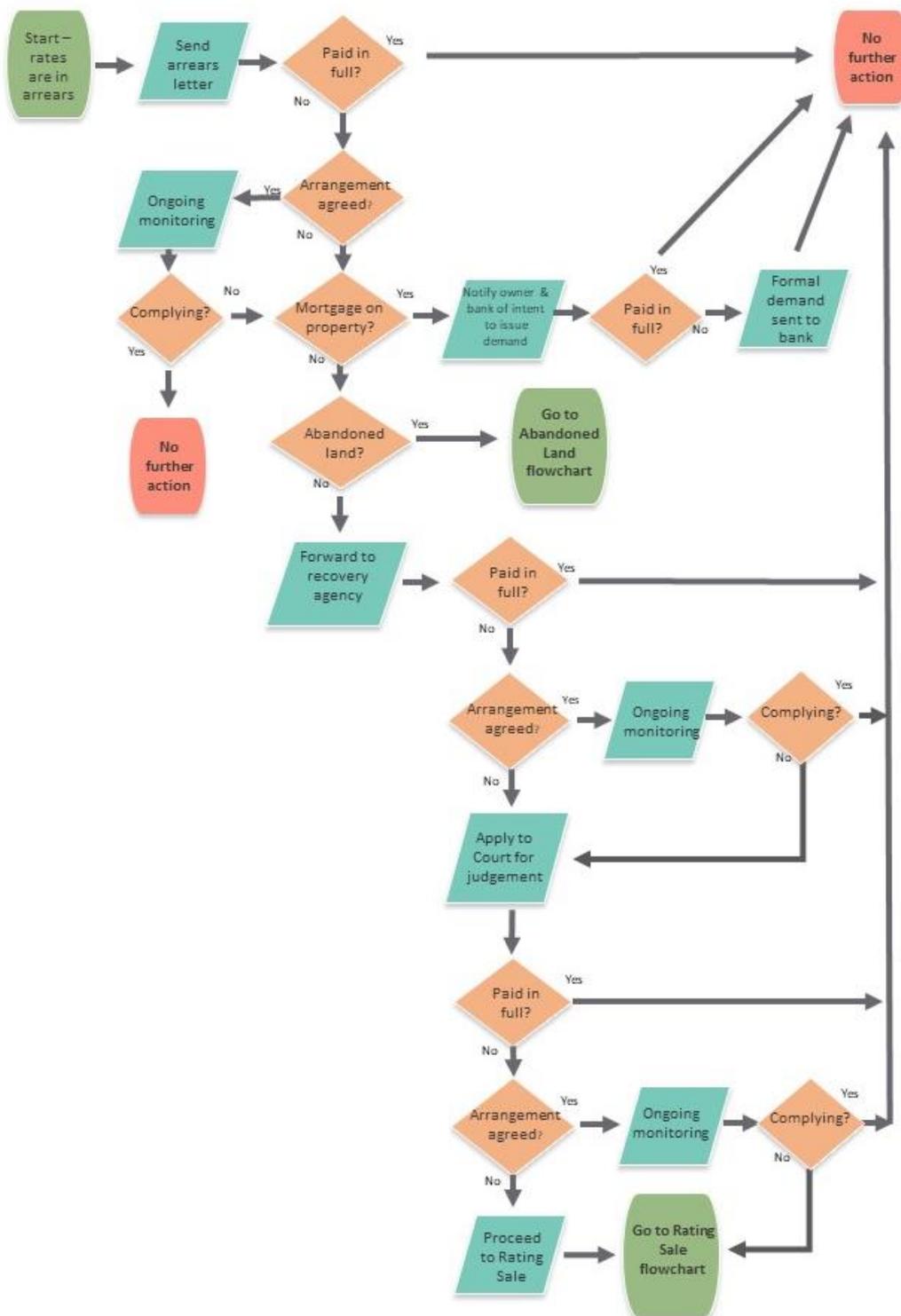
The Mackenzie District Council General Manager Corporate Services is responsible for monitoring compliance with this policy. Failure to comply may be considered misconduct and may result in disciplinary action.

### **8.3 Exceptions**

The Mackenzie District Council General Manager Corporate Services (being the policy owner) will need to authorise any deviations from this policy.

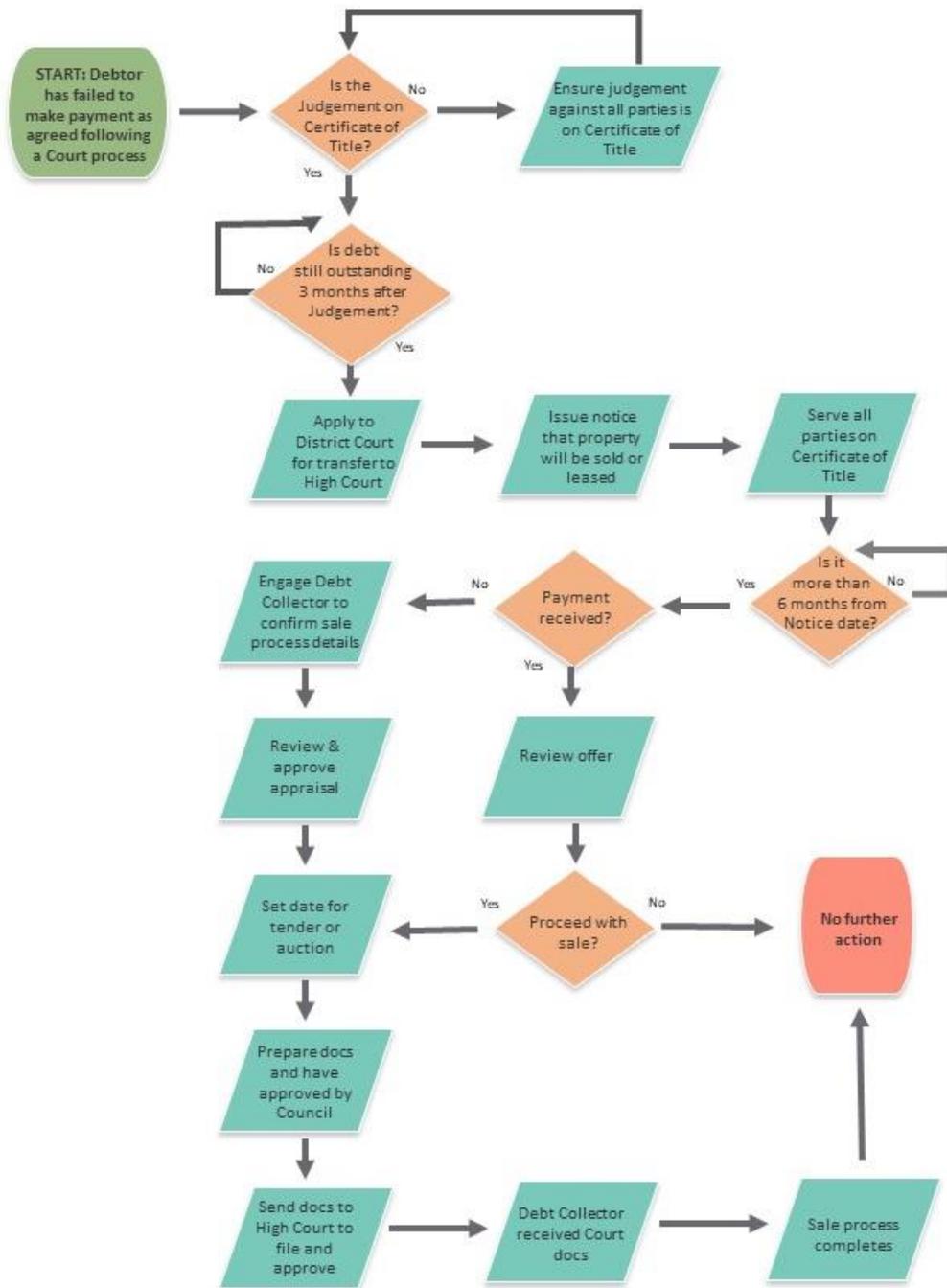
## 9. Appendix A – Rates Arrears Recovery Process

The following flow chart diagram summarises the process to recover rates arrears.



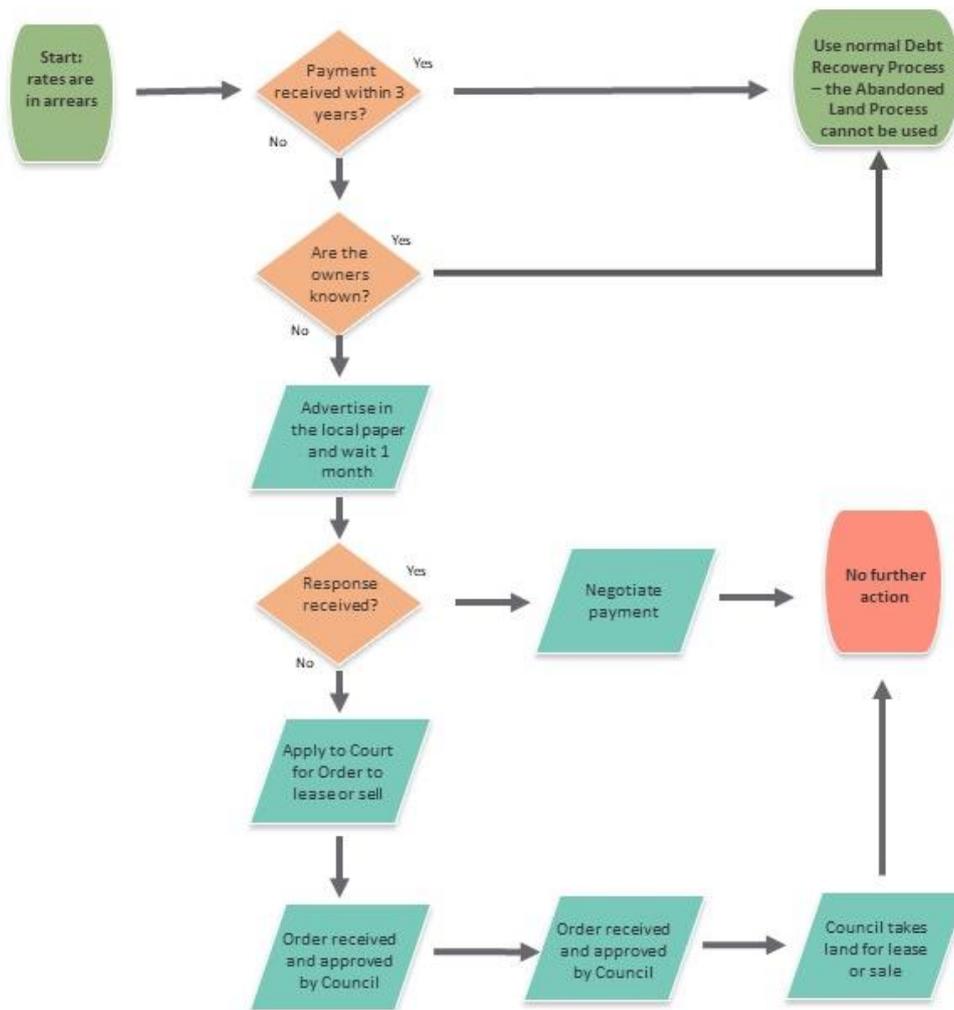
## 10. Appendix B - Rating Sale Process

The following flow chart diagram summarises the process to sell a property if the rates debtor has failed to make payment as agreed, following a court process.



## 11. Appendix C - Abandoned Land Rating Sale Process

The following flow chart diagram summarises the process to sell a property if the rates debtor has failed to make payment for over three years, and the property owner(s) is unknown.



## 12. Appendix D - Non-Rates Arrears Recovery Process

The following flow chart diagram summarises the process to recover unpaid debts other than rates debts.

