



POLICY REGISTER

Debt Recovery

DOCUMENT CONTROL

Issue.	Prepared/Revised by and Date	Action/Amendment Description	Approved By and Date
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BACKGROUND

Chapter 15 of The Local Government Act 1993 (*the Act*) sets out the requirements for levying and payment of rates and charges. Council issues an annual rate notice on all rateable land within the Shire on an annual basis. Council may also levy an annual charge for Commercial or Domestic Waste Management, Water and Sewer Access, Storm water Management Levy and for actual usage including Water Usage and Sewer Discharge usage.

Council also issues Sundry Debtor invoices for user fees and charges under various provisions of *the Act* and the Local Government (General) Regulation 2005 (*the Regulations*). These fees and charges are calculated to recoup Council's costs of service delivery for the respective items.

This policy replaces Council's previous policies for collection of Outstanding Rates and policy for collecting of Fees and Charges, both adopted February 2017.

POLICY OBJECTIVE

The objective of this policy is to ensure monies owed to Council are recovered in a timely, efficient and effective manner in order to finance Council's operations and ensure effective cash flow management and good financial control. While carrying out this responsibility Council will:

- Treat all people fairly, with integrity and consistently under this policy
- Treat all matters under this policy confidentially
- To be sympathetic to ratepayers and other debtors suffering genuine financial hardship
- Ensure effective control over debts owed to Council
- To fulfil the statutory requirement of the Local Government Act, 1993 (*the Act*) with respect to the recovery of rates, charges and other debts.
- Outline the principles and guidelines that apply to the recovery and management of overdue Rates, Water Consumption Charges and Sundry Debtor accounts

SCOPE

This policy will apply to all ratepayers and sundry debtors of Balranald Shire Council

This policy applies to Council staff with delegated responsibility for carrying out the procedures, and debt recovery agents who act on behalf of Council.

POLICY STATEMENT

Council will carry out debt recovery in a fair and consistent manner and in accordance with the provisions of *the Act*, to manage its finances in a thorough and timely manner.

PROVISIONS

Rates and Annual Charges

Annual rates and charges notices are issued in July of each year. These may be paid in a single instalment or by quarterly instalments. If paid in a single instalment, the instalment is payable by 31 August. If payment is made by quarterly instalments, the instalments are payable by 31 August, 30 November, 28 February and 31 May.

Annual Rate and charges Notices, quarterly Instalment Notices and Water Notices are issued 30 days before the due date.

a) Reference: Section 562 Local Government Act 1993

Water and Sewer Consumption Charges

Water and Sewer charges are billed quarterly, in arrears. Invoices are issued 30 days before the date due for payment.

b) Reference: Section 502 Local Government Act 1993

Sundry Debtors

Council issues debtor invoices for numerous services, including private works, as set out in Council's Fees and Charges. Council also issues invoices for services provided by Bidgee Haven Hostel, lease fees, rental income, and other sundry income, including goods purchased by tender.

Council reserves the right to refuse credit for private works where a property owner has other overdue amounts owing to Council or has a poor payment history with Council. Council may also, on a case by case basis, require a 50% deposit prior to works commencing.

c) Statement of accounts are issued at the end of every month, and are due within 30 days.

d) Reference: Section 608, 610(a-f) Local Government Act 1993

e) Local Government (General) Regulation 2005

Interest

Council charges interest, calculated on a simple daily basis, on amounts that become overdue, including rates, charges and sundry debtors. The maximum rate of interest is determined annually by the Department of Local Government and advertised in the NSW Government Gazette.

Council may waive or write off accrued interest charges in mitigating circumstances affecting the ratepayer, e.g. hospitalisation, death in the family, illness or other reasons that may cause the person financial hardship. Write offs are approved by a staff member or General Manager according to Council's delegation policy or by Council resolution. Council will be under no obligation to write off such charges.

Interest charges which have been incorrectly raised by Council will be written off.

f) Reference: Section 566 and 567 Local Government Act 1993

Reminder Notices

A Reminder Notice will be sent for outstanding amounts after 14 days of the due date, to those ratepayers or debtors who have not made satisfactory payment arrangements. This notice will provide the ratepayer or debtor a total of the amount overdue and option of paying by a suitable payment arrangement. Reminder Notices will request payment within 14 days from date of issue and advise legal action may commence if payment is not made in full or a suitable arrangement entered into.

Outstanding Water – Notice to restrict water supply

If the ratepayer fails to pay following a Reminder Notice for water usage, or does not enter into an acceptable payment plan, they may be notified of Councils "Intent to restrict the water supply" in 14 days from the date of that notice. Where the amount outstanding exceeds \$1000 the General Manager may, after approval of Council, organise disconnection of the water supply in place of restriction.

This notification will be hand delivered to the property in addition to being sent by registered post.

Where a notice of intent to restrict water supply is issued, and the amount is not paid within the designated 14 working days, Council staff will implement the notified actions and commence immediate debt recovery action.

In the event that amounts outstanding are paid after water supply has been restricted the ratepayer will be responsible for paying all water supply disconnection and restoration costs to Council prior to water supply being restored.

Reference: Clause 13 (1) (b) Local Government (Water Services) Regulation 1999

Payment Arrangements

Rates and Water payment arrangements should be calculated over a maximum period of 12 months and include payment of current rates as they fall due during the period of the arrangement. Under special circumstances this may be extended to two years upon application for relief under Council's Financial Hardship Assistance Policy. Payments can be made weekly, fortnightly, monthly or by other suitable arrangements. Where a ratepayer wishes to repay a debt over a period greater than 12 months, a 'Default Judgement' may be obtained to secure the debt. Any legal fees and charges will be charged against the account.

Debtors payment arrangements should be calculated over a maximum period of 3 months. Council can suspend ongoing private works agreements if a previous invoice becomes outstanding, and the amount has not been paid or a payment arrangement entered into after a reminder notice issued.

Interest will continue to accrue on any arrears during the period of payment arrangement.

Council does not accept transfer of land as payment in full of any debt.

Any default in arrangements that occur for a period of one month without prior notification will result in Council issuing a warning that other debt collection avenues will commence. Consideration will be given for extension on a case by case basis if an acceptable reason is given for default in the payment plan.

Debt Recovery Action - Referral to Debt Collection Agency

g) If a payment arrangement is not entered into following a reminder notice, Council will seek to contact the ratepayer or debtor by phone or email, if possible.

h) If no further payment is made, a Final Notice will be issued by Council advising that the debt will be referred to Councils debt recovery agency to commence legal action. Legal action will be according to the provisions of the Act, and can include, but not limited to, the following options:

- Issue and serve a summons, known as Statement of liquidated claim
- Default Judgement (following a Affidavit of Debt lodged with the Court)
- Writ of execution (following a Application to Issue Execution form lodged with the Court). Unless an Instalment Order by the debtor is accepted by the Court, this will enable the Sheriff to seize goods to the estimated value of the debt and place them for sale at public auction, and Council receive payment of the debt from the sale.
- Garnishee issued for recovery by garnishee against the debtor's salary or bank account, or garnishee rent if property has a tenant under section 569 of *the Act*.
- Examination notice and order
- Bankruptcy proceedings
- Sale of land, according to section 713 of *the Act* where rates have been overdue for a minimum of 5 years or in the case of vacant land, after 12 months if the amount of the rates owing exceed the land value. Section 714-720 of *the Act* outline the process to follow for sale of land.

Section 605 of *the Act*, allows costs incurred by Council in the recovery process, including professional costs, legal fees and collection fees to be added to the amount owing by the relevant debtor subject to any limitation in respect of the amount that can be recovered which is imposed by any statutory instrument. Any costs awarded to Council by a court are a charge on the land, and are payable according to section 550 of *The Act*.

Writing off of debts

Rates & Charges

Rates or charges may only be written off in accordance with provisions of Clause 131 of the Local Government (General) Regulation 2005. It allows debts to be written off only:

- a. if the debt is not lawfully recoverable, or
- b. as a result of a decision of court, or
- c. if Council or the General Manager believes on reasonable grounds that an attempt to recover the debt would not be cost effective.

If a debt is written off under this section does not prevent Council from taking legal proceedings to recover the debt. Clause 131(1) of *the Regulation* states that amounts according to Council's delegation may be written off by the General Manager. Amounts above the delegation can only be written off by resolution of Council.

Other Debts owed to Council

Debts owing to Council other than for rates or other charges may only be written off in accordance with the provisions of Clause 213 of the Local Government (General) Regulation 2005 or where the Act or any regulation in force under the Act, make specific provision for writing off those amounts in specified circumstances. In accordance with Clause 213(2) of the Local Government (General) Regulation 2005 Council fixes an amount according to Council's delegations as the amount above which debts to the Council may be written off only by resolution of the Council. Debts in relation to Concealed Water Leaks are the subject of a separate Policy.

Non Business Fees

Council may waive payment of, or reduce a non-business fee in a particular case if Council is satisfied that the case falls within a category of hardship or any other category in respect of which Council has determined payment should be so waived or reduced in accordance with Section 610E of the Local Government Act (Division 3 Council fees for non-business activities). Council determines the following categories

1. Demonstrated financial hardship; or
2. As recompense for poor customer service or other error on the part of Council; or
3. The circumstances of a particular case, where full fee payment would be unreasonable or inequitable.

A Non Business Fee is any fee other than a fee for business activities defined in Section 610A of the Local Government Act, 1993 (Division 2 Council fees for business activities).

Confidentiality of Information

Council will, at all times, maintain the confidentiality of information provided to it, or its staff members, in relation to an application under this Policy.

Personal information provided will be managed in accordance with the *Privacy and Personal Information Protection Act 1998* (PIIP Act).

Council will not supply private credit agencies with information regarding legal action it has taken in the recovery of overdue amounts. However, Council recognises that judgement details are supplied to credit agencies by NSW courts.

DOCUMENTATION / COUNCIL AND EXTERNAL REFERENCES

Local Government (General) Regulation 2021

Local Government Act, 1993

Local Government (Water Services) Regulation 1999

Privacy and Personal Information Protection Act 1998

Balranald Shire Council's Policy for Assistance with Payment of Rates, Fees and Charges as a Result of Financial Hardship

Balranald Shire Council's Water Leak Policy

POLICY REVIEW

This policy will be reviewed four years from the date of formal adoption by Council or within 12 months of a Council election.