



# **BYRON SHIRE COUNCIL**

**POLICY NO. 2.3**

**DEBT RECOVERY**

**INFORMATION ABOUT THIS DOCUMENT**

<b>Date Adopted by Council</b>	24 June 1997	<b>Resolution No.</b>	9143
<b>Policy Responsibility</b>	Corporate Management		
<b>Review Timeframe</b>	As required		
<b>Last Review Date:</b>	October 2010	<b>Next Scheduled Review Date</b>	

***Document History***

<b>Doc No.</b>	<b>Date Amended</b>	<b>Details Comments eg Resolution No.</b>
#628690	12/2/02	Res 02-34
#1022697	11/11/10	Draft reported to Council
#1074640	11/11/10	Res 10-890 Adopted after exhibition period – 30/12/10

***Further Document Information and Relationships***

<b>Related Legislation</b>	Local Government Act 1993 Local Courts Act 1970
<b>Related Policies</b>	
<b>Related Procedures/ Protocols, Statements, documents</b>	

**TABLE OF CONTENTS**

1. OBJECTIVES ..... 1

2. DEBT RECOVERY PROCEDURES FOR RATES ..... 1

    2.1. The Rates Final Reminder Notice ..... 1

    2.2. Deferral of Recovery Action against Eligible Pensioners..... 2

    2.3. Proceeding with Legal Action - ..... 2

    2.4. Proceeding with Legal Action (Local Government Act)..... 3

    2.5. Hardship Considerations..... 3

    2.6. Debt Recovery Procedures for Water and Sewer Usage Charges ..... 4

    2.7. Proceeding with Recovery Action (Notice of Water Restriction) ..... 4

    2.8. Debt Recovery Procedures for Sundry Debtors ..... 5

    2.9. The Writing Off of Sundry Debtors..... 5

    2.10. Special Circumstances ..... 6

**POLICY TITLE**            DEBT RECOVERY

**FILE REFERENCE**        COR050505

**1. OBJECTIVES**

- 1.1. To provide guidance to the General Manager and staff on appropriate debt recovery and write-off procedures to be undertaken to ensure effective control over Rates and Charges that become due and payable.
- 1.2. To recover monies owing to Council in a timely, efficient and effective manner in order to ensure effective cash flow management.
- 1.3. To fulfil the statutory requirements of both the Local Government Act, 1993 and Local Courts Act, 1970, with respect to the recovery of rates and other debts.
- 1.4. To ensure the integrity and confidentiality of all proceedings for both the Council and the debtor.

**2. DEBT RECOVERY PROCEDURES FOR RATES**

2.1. The Rates Reminder Notice

A Rates Final Reminder Notice shall be issued for amounts over \$50.00 within 14 days after the due date of an instalment to those ratepayers who have not made previous satisfactory payment arrangements.

- (a) Mutually suitable arrangements may be entered into with ratepayers requesting extensions to pay outstanding amounts. It is Council's intention to have a maximum period of 24 months for which debts may be paid under suitable arrangement, including current levies during the period of arrangement.
- (b) Interest will continue to accrue on any arrears during the period of arrangement.
- (c) All requests for extensions or payment arrangements are to be made in writing or by completing Council's Application for Payment Arrangement form. Payments can be made either weekly, fortnightly, monthly or by other suitable arrangements.
- (d) If the arrangement is in arrears for a period greater than 14 days, without prior notification, Council will contact the debtor in writing advising that legal action may commence as a result of the default arrangement.

## 2.2. Deferral of Recovery Action against Eligible Pensioners

- (a) An eligible pensioner may apply for a delay in recovery action in order to allow outstanding rates and charges to accrue against their estate. The application must be on the approved form available from Council.
- (b) The pensioner must be in receipt of a current pensioner concession card (PCC) marked “Aged” (AGE) or “Disability Support” (DSP) from Centrelink or a TPI or EDA Gold Card from Department of Veteran Affairs.
- (c) Council will continue to provide an annual rates and charges notice each year showing outstanding rates and charges and quarterly instalment notices as per the provisions of the Local Government Act.
- (d) The deferment of rates and charges does not include Water and Sewerage Usage charges.
- (e) If any of the following events occur the Agreement to Defer Rates and Charges will become null and void and legal action may be instigated to recover outstanding Rates and Charges :-
  - there is a change of ownership of the property,
  - any of the eligible pensioners listed as owners of the property cease to occupy the property as their principle place of abode, (except in the situation where the pensioner is in a care facility on a temporary basis being a period less than 12 months)
  - any of the pensioners listed as owners of the property are no longer eligible for a concession.
  - the rates and charges outstanding on the property exceed nineteen years from the date they became due and payable.
- (f) Due to the constraints of Section 712 of the Local Government Act 1993, Council will require that the ratepayer commences payment of any outstanding rates and charges on the property that exceed nineteen years from the date they became due and payable.
- (g) Should the ratepayer be unable to adhere to any of the above, Council will commence legal action in order to recover all outstanding rates and charges on the property.
- (h) Interest will continue to accrue on all outstanding rates and charges in accordance with the provisions of the Local Government Act 1993.
- (i) All applications to Defer Rates & Charges must be approved by the General Manager.

## 2.3. Proceeding with Legal Action

- (a) If Council receives no response from the debtor after the due date of the Final Reminder Notice or as a result of a defaulted payment arrangement notification Council may commence legal action.

- (b) Legal Action will commence for amounts greater than \$400.00, only where there is more than one instalment outstanding for rates and charges. A 'Letter of Demand' will be issued to the ratepayer from Council's external debt recovery agent giving the ratepayer 14 days to respond.
- (c) If payment in full or an arrangement for payment has not been received by the due date stated on the 'Letter of Demand' then Council's external debt recovery agent may issue and serve a 'Statement of Claim. The debtor may, within 28 days of the service of the Statement of Claim lodge a defence to the claim made by Council.
- (d) If the debtor does not respond to the Statement of Claim within 28 days, Council's external debt recovery agent may apply for 'Default Judgment'. The Default Judgment will be recorded against the debtors credit file by a credit reporting agency and may affect their capacity to obtain credit or to refinance in the future. The Judgment is valid for 12 months.
- (e) After obtaining Default Judgment Council may recover the debt via a 'Writ of Execution', a garnishee against the debtor's salary or bank account, or issue an Examination Summons.
- (f) Any legal expenses incurred by Council from the recovery of outstanding rates and charges can be charged against the debtor under the Local Courts Act 1970.

#### 2.4. Proceeding with Legal Action (Local Government Act)

- (a) Pursuant to Section 712 of the Local Government Act, proceedings for the recovery of a rate or charge may be commenced at any time within 20 years from the date when the rate or charge became due and payable.
- (b) All rates and charges payable by the same person, whether in respect of the same or of different land, may be recovered in a single action.
- (c) Section 605 of the Local Government Act 1993, allows Council to add to the amount of a rate or charge any reasonable out-of-pocket expenses incurred in tracing the person liable to pay the rate or charge.
- (d) The Local Government Act 1993 allows further options for Council to recover outstanding debts.
- (e) Section 569 allows Council the option to garnishee rent if the rateable property is let by the debtor to a tenant. A Notice must be served on the tenant under this Section before the garnishee can be attempted.
- (f) Where rates have remained unpaid for more than 5 years, Council may under Section 713(1) sell the property for unpaid rates.

#### 2.5. Hardship Considerations

- (a) Applications for Hardship Rate Relief must be submitted to the General Manager on the appropriate form under the provisions of Council's Financial Hardship Policy no. 09/003. Each application will be considered on its merits.

## 2.6. Debt Recovery Procedures for Water and Sewer Usage Charges

- (a) A reminder notice shall be issued within 14 days after the due date of the water and sewer usage account to those ratepayers who have not made previous satisfactory payment arrangements. Reminder Notices will be issued for amounts over \$50.00 outstanding and will request payment within 14 days from the posting date of the notice.
- (b) Arrangements to pay off water and sewer usage charges will be the same as the procedures for the recovery of rates and charges. All arrangement to pay outstanding water and sewerage usage accounts must be made with the owner of the property. No arrangement for payment is to be entered into with the tenant of the property.

## 2.7. Proceeding with Recovery Action (Notice of Water Restriction)

- (a) The restriction of water supply due to non payment is pursuant to the Local Government (General) Regulations 2005. Such restriction, when made, will allow restricted water use so as to maintain personal hygiene only.
- (b) Where amounts remain unpaid or an arrangement for payment is not entered into after the due date of the reminder notice, a notice of Intention to Restrict Water Supply will be issued advising that the normal water supply of water will be restricted in 14 days from the date of the notice. The notice will be sent to the owner of the property at the last known address, and a copy of the notice will be issued to “The Occupier” addressed to the property address.
- (c) If Council receives no response from the issue of the Intention to Restrict notice, a further notice, Water Restriction Notice, will be served (hand delivered) on the occupier of the property, addressed to “The Occupier” at the property address advising that the water supply will be restricted on a specified day being 7 days from the date of the notice. The Water Restriction Notice will also be issued to the owner of the property at their last known address.
- (d) If the water and sewerage usage account remains unpaid the normal supply of water will be restricted on the day specified on the notice. The water supply will not be restored until the account is paid in full along with the reconnection fee. No arrangement for payment of the account will be entered into after the water restrictor has been installed.
- (e) If Council is aware that the property is being rented the water restrictor will not be installed on the property and the owner will be issued with a “Letter of Demand” issued by Council’s external debt recovery agents advising that legal action will commence in order to recover the outstanding debt.

## 2.8. Debt Recovery Procedures for Sundry Debtors

- (a) Council will raise sundry debtor invoices for amounts of \$20.00 or greater.
- (b) All debtor accounts are strictly 30 days from the date of invoice.
- (c) Payment arrangements may be made for the payment of sundry debtor accounts if requested. These debts will be paid under a suitable arrangement for a maximum period of 6 months.
- (d) Monthly statements are to be forwarded to debtors. Outstanding amounts of more than 30 days are to be regarded as overdue.
- (e) Where amounts are outstanding for more than 60 days, credit will cease.
- (f) If Council does not receive payment within 14 days after the issue of the monthly statement and the account is more than \$50.00 Council will send a 'Letter of Demand' to the debtor.
- (g) If Council does not receive payment within the 14 day period as stated on the 'Letter of Demand' legal action will be commenced. Legal action against Sundry Debtors will follow the same procedures as stated in this document under Proceeding with Legal Action for rates.
- (h) This policy will not apply to amounts due from Government Departments and such amounts shall be recovered by prompt action with the Government Department direct.

## 2.9. The Writing Off of Sundry Debtors

- (a) Section 610E allows Council to waive payment of, or reduce an approved fee other than rates and charges. This can be done if the case falls within the category of hardship or any other category in respect of which the Council has determined a category of cases under this Section until it has given public notice of the proposed category.
- (b) Council currently has the following categories in place to refund or waive fees.
- (c) The General Manager or delegated authority has the discretion to waive or reduce a fee under Section 610E:
  - Demonstrated financial hardship, or
  - Public benefit (eg: Charitable projects), or
  - As recompense for poor customer services or other error on the part of Council,
  - The circumstances of a particular case, where full fee payment would be unreasonable or inequitable.
- (d) A sundry debt above \$5,000.00 can only be written off in conjunction with Section 610E of the Local Government Act, by resolution of Council.
- (e) The General Manager may write off a sundry debt in conjunction with Section 610E if it is equal to or less than \$5,000.00.

- (f) In accordance with Clause 20 of the Financial Management Regulation, a resolution or order writing off a debt must:
- Specify the debtor's name;
  - Identify the account concerned; and
  - Specify the amount of the debt.
- (g) A written record is to be kept of all bad debts write offs.

#### 2.10.Special Circumstances

- (a) Where special circumstances exist, the matter is to be referred to the General Manager for determination.