

COUNCIL POLICY DOCUMENT

POLICY TITLE: RATE RECOVERY AND HARDSHIP POLICY

POLICY NUMBER: C-HPO-001-P

DATE ENDORSED BY COUNCIL: 23 MAY 2023

DATE OF NEXT REVIEW: BEFORE 30 JUNE 2026

RESPONSIBLE DEPARTMENT: FINANCIAL SERVICES

1. STATEMENT OF INTENT

The intent of this policy is to support Council in its commitment to the timely recovery of rates and charges in order to ensure adequate funding of the ongoing services and capital work projects it provides for community benefit, and to fulfil its broader business management and corporate governance responsibilities.

In addition, Council is committed to early engagement with ratepayers who are experiencing difficulties in paying rates and charges, and to provide support and options for ratepayers in these circumstances.

Council raises rates and charges against properties in accordance with the Local Government Act 1989 s("the Act") including provisions made under the "Rating and Other Matters" amendment 2022 and provides a number of options through which payments can be made.

Where a property has overdue amounts above the thresholds itemised in this policy and there has been insufficient contact from customers, Council may avail itself of the debt recovery options under Sections 180 and 181 of the Act

2. POLICY OBJECTIVES

The key objectives of the Rate Recovery and Hardship Policy are:

- to provide clear parameters to Council, Council Staff, and the Debt Recovery Contractor to allow the effective and consistent recovery of overdue rates and charges; and
- to provide assistance to ratepayers experiencing hardship who are unable to make payments through the standard options provided.

3. POLICY STATEMENT

The following key strategies may be used to achieve the policy objectives:

- Issue rate notices detailing amounts owing, due dates and payment methods available, issue courtesy reminder notices prior to the lump sum payment date and issue final notices following payment due dates;
- Instigate legal action if the amount owing satisfies criteria contained in this policy;

- Consider the sale of the property for significant debts where other recovery action has failed if the amount owing satisfies criteria contained in this policy; and
- Consider applications from ratepayers to deviate from the standard payment options by entering into Payment Plans, and where the ratepayer is experiencing hardship consider applications under Section 170 and 171A of the Act.

3.1 Standard Payment Options

Ratepayers can avail themselves of one of the following standard payment options:

- i. Lump sum payable on or before February 15 in accordance with Section 167(2B) of the Act;
- ii. Four instalments payable on or before the last day of September, November, February, and May in accordance with Section 167(2) of the Act;
- iii. Nine monthly instalments payable on or before the last day of each month beginning September and concluding May; and
- iv. Payments every fortnight or month over the rating year by direct debit of a bank account.

3.2 Late Payment Penalty Interest

Interest will be charged on all amounts that are overdue **at** the maximum amount prescribed by Essential Services Commission / State Government in accordance with Section 172 of the Act at the rate set under the Penalty Interest Rates Act 1983.

3.3 Recovery of Overdue Rates

Where ratepayers do not make their payments in line with one of the standard options available under Section 3.1 and there is no approved Payment Plan under Section 3.4 or approved hardship application under section 3.5 further action will be taken to recover the money owing to Council as follows:

3.3.1 Lump Sum Payment

Following the date set for payment under section 167 (2B) of the Act, a Late Payment Advice requesting payment within 14 days will be issued for all properties where the amount owing is equal to or greater than the amount shown under item 1 of the schedule to this policy.

Where a ratepayer meets the criteria established in section 180 of the Act and fails to respond to the Late Payment Advice (by making payment in full or requesting a suitable Payment Plan in accordance with section 3.4 of this policy), the matter will be referred to Council's Debt Recovery Contractor who will send a Solicitor's letter demanding payment within 7 days. This demand letter will only be sent where the amount owing is equal to or greater than the amount shown under item 2 of the schedule to this policy.

Those ratepayers who fail to respond to the Solicitor's final demand letter (by making payment in full or requesting a suitable Payment Plan in accordance with section 3.4 of this policy) will be managed by Council's Debt Recovery Contractor for legal proceedings to be commenced. This action will only be commenced for those ratepayers where the amount owing is equal to or greater than the amount shown under item 3 of the schedule to this policy, as the cost of legal action is significant and is charged to the ratepayer.

A Complaint is then prepared and lodged with the Magistrates Court for issue. Once the Complaint is lodged with the Court, the associated legal costs become chargeable. Once the

Complaint is issued by the Court, it is then served on the ratepayer who must comply with one of the following within 21 days from the date of service:

1. Pay the claim in full plus costs;
2. Enter into a Payment Plan under Section 3.4; or
3. Lodge a completed Notice of Defence with the Court (thereby giving notice of their intention to dispute the claim).

If, at the expiration of the 21 days, the ratepayer has failed to carry out any of the above, an application will be made to the Court for an Order against the ratepayer for the amount of the debt plus costs. Once an Order has been made the following execution proceedings to recover the debt will be considered depending on the history of the ratepayer:

1. Summons for Oral Examination (ratepayer is interviewed by the Clerk of Courts regarding their financial situation and intentions in relation to repaying the debt);
2. Letter to mortgagee (a Court Order is not necessary, but this action would normally only be taken after a debtor has failed to respond to an order being obtained);
3. Rent Demand (on the tenant of a rented property);
4. Warrant to seize goods (some goods are not able to be seized like necessary household goods, tools of trade and low valued motor cars);
5. Garnishee of wages; and
6. Sale of property (refer to section 3.6 of this policy).

Once a debt has been placed in the hands of Council's Debt Recovery Contractor all negotiations with the ratepayer will be handled by the Contractor.

3.3.2 Monthly Instalments

When the date set for lump sum payment under section 167 (2B) of the Act has passed and a ratepayer is behind by two or more monthly instalment payments, the monthly instalment plan will be cancelled, and recovery of the overdue rates may be instigated in accordance with section 3.3.1 of this policy.

3.3.3 Four Instalments

Where rates remain unpaid 14 days after the final date for payment of the fourth instalment, recovery of the overdue rates may be instigated in accordance with section 3.3.1 of this policy.

3.4 Payment Plans

Where a ratepayer is unable to make their payments by any of the standard options available under section 3.1 of this policy, a Payment Plan may be entered into. Under section 171B of the Act, Council may enter into a Payment Plan with a person for the payment of rates or charges (including any interest already charged under section 172). These arrangements can be made at any time during the recovery process but are subject to the following conditions:

1. All requests for Payment Plans are to be made in writing, email, or online submission

on Council's website, by the ratepayer;

2. Any default in the terms of the Payment Plan may, upon notice to the ratepayer, result in that Payment Plan being cancelled. The amount owing will become due and payable, and further debt recovery actions may be sought by Council in accordance with section 180 of the Act;

Council will be flexible regarding the type of arrangement entered into in order to best suit the ratepayer's circumstance, provided that minimum payments over a 12-month period cover the annual rate charge. Ratepayers who are unable to make this minimum repayment should be assessed in accordance with the hardship provisions contained in Section 3.5 of this policy; and

5. To be considered for a Payment Plan, ratepayers must pay by one of the following frequencies:
 - Weekly
 - Fortnightly
 - Monthly
7. Payment Plans between ratepayers and Council will remain in place until one or more of the following occur:
 - All overdue amounts have been paid in full
 - Payments meet the instalment requirements noted under section 167 of the Act
 - The ratepayer fails to meet the payment amounts and/or frequencies agreed upon in their Payment Plan
 - All ratepayer(s) (or their estates) responsible for payment of rates and charges at the time of agreement to the Payment Plan, transfer the property to another party or parties.
8. Further to (7) any rates and charges that become overdue whilst a Payment Plan is in place, will be added to the total agreed amount to be paid on that payment plan without further notice to the ratepayer.
9. Applications that do not conform to the above are to be referred to the Executive Officer, Property Rating Services for consideration and approval.
10. Under section 3.4.3 of this policy, where a ratepayer has had a Payment Plan cancelled, Council may choose to:
 - Request the ratepayer to pay other or future Payment Plans via a Direct Debit agreement with Council; or
 - Not accept any Payment Plan proposals from that ratepayer.

3.5 Hardship Agreements

Under section 170 of the Act, a person may apply to have the whole or part of any payment of a rate or charge deferred for a specified period. Council can grant that application, absolutely or subject to conditions, if it considers that payment by the due date would cause hardship to the applicant.

Under section 171A of the Act, a person suffering hardship may make application to Council for a waiver of the whole or part of any rate, charge, or interest. Council may grant that application at its discretion.

Where Ratepayers are unable to make their rate payments on time or at all, they can make application for deferral or waiver. If Council is satisfied that any applicant will suffer hardship, consideration will be given to deferral or waiver (or a combination of both).

The intent of this section of the policy is that any benefit granted is not meant to be an ongoing benefit but is to give the applicant time to reassess their financial situation.

Generally, it is Council's policy position that some form of assistance will only be considered:

1. For a property used primarily for residential purposes or land classified as farmland, in circumstances where the applicant lives on the property, and it is their sole or principal place of residence; or where the applicant can demonstrate a reasonable inability to derive income from or liquidate other property assets owned;
2. If the applicant establishes that they derive a low income (for example, is receiving a pension or unemployment benefits) by completing an application for hardship and deferment showing relevant financial details (including income, expenditure, assets and liabilities) and that the demonstrated financial situation does not allow them to pay their current year's rates and charges over a period of 12 months;
3. Where the current Capital Improved Value ("CIV") of the property in respect of which assistance is sought is greater than or equal to the relevant current average differential rating valuation - that the customer can demonstrate an inability to liquidate that asset or provide substantial reasoning as to why it should not be sold in place of a more affordable option; and
4. If considered necessary by Council, the applicant has attended an interview with a Financial Counsellor, where an application for hardship has been completed showing relevant financial details (including income, expenditure, assets, and liabilities).

If a hardship application is successful, generally the outcome will be that no interest will be charged, or legal action taken in respect of any outstanding rates and charges for the duration of the period for which the application is made (generally 24 months).

3.5.1 Special Circumstances

Council acknowledges that special circumstances may exist where the applicant does not meet one or more of the above conditions for a hardship agreement. For example, where a large amount has been levied for a Special Charge Scheme or where the applicant is suffering from ill health or injury.

Where special circumstances exist and not all the above conditions are met, the application is still able to be approved at the discretion of the Manager Financial Services.

3.5.2 Assistance Provided

Generally, if an application for deferral or waiver is made, and it is decided for Council to provide a form of assistance, the assistance will take the following form:

1. No further interest will be charged on the outstanding rates for a period of 24 months from the date of application;
2. No legal action for the recovery of the outstanding rates will take place during the 24 month period;
3. Some level of repayments are to be made over the 24 months to reduce the outstanding rates and therefore take advantage of the interest free period; and
4. At the end of the 24 months the applicant will need to reapply if further assistance is required.

Again, special circumstances may justify a different form of assistance being made available.

3.6 Sale of Property

In addition to the debt recovery procedures available through the legal system, under Section 181 of the Act, Council has the power to sell property where:

1. There are rates and charges which are more than three years overdue; and
2. There is no current Payment Plan for the payment of the overdue rates and charges; and
3. There is a Court order requiring the payment or part-payment of the overdue rates and charges.

This action may be taken if **one of** the following criteria is satisfied, after giving regard to the ratepayer's debt repayment record and ability to repay the debt, their age, state of health and family situation:

3.6.1 Vacant Land

If land is vacant and the total amount owing is greater than the amount shown under item 4 of the schedule to this policy or more than 25% of Council's CIV.

3.6.2 Improved Commercial and Industrial Land

If a property is rated as Commercial or Industrial land and the total amount owing is greater than the amount shown under item 5 of the schedule to this policy or more than 25% of Council's CIV.

3.6.3 Residential Land

If a property is a residential dwelling occupied by the owner and the total amount owing is greater than the amount shown under item 6 of the schedule to this policy or more than 50% of Council's CIV.

If a property is a residential dwelling, not occupied by the owner (for instance a rental or investment property), and the total amount owing is greater than the amount shown under item 7 of the schedule to this policy or more than 25% of Council's CIV.

3.6.4 Farmland

If a property is rated as Farmland with a residential dwelling occupied by the owner and the total amount owing is greater than the amount shown under item 8 of the schedule to this policy or more than 50% of Council's CIV.

3.6.4 Other Land

For all other land if the total amount owing is greater than the amount shown under item 9 of the schedule to this policy or more than 25% of Council's CIV.

3.7 Review

The Policy will be reviewed every three years with the exception of the dollar thresholds contained in the schedule to the policy. These dollar thresholds must be reviewed, and may be amended, annually by Council's Director Corporate Services. Any amendment must be the subject of notice to Councillors.

4. RELATED POLICIES, STRATEGIES AND PLANS

Nil

SCHEDULE – RATE RECOVERY AND HARDSHIP – THRESHHOLDS JUNE 2023

| Item | Rate Recovery and Hardship Policy Section | Amount |
|-------------|--|---------------|
| 1 | Section 3.3.1 – amount owing before issue of Late Payment Advice | \$ 10 |
| 2 | Section 3.3.1 – amount owing before issue of solicitor letter | \$1,000 |
| 3 | Section 3.3.1 – amount owing before issue of Magistrates Court Complaint | \$ 2,500 |
| 4 | Section 3.6.1 – amount owing before land can be sold | \$5,000 |
| 5 | Section 3.6.2 – amount owing before land can be sold | \$10,000 |
| 6 | Section 3.6.3 – amount owing before land can be sold | \$20,000 |
| 7 | Section 3.6.3 – amount owing before land can be sold | \$10,000 |
| 8 | Section 3.6.4 – amount owing before land can be sold | \$20,000 |
| 9 | Section 3.6.5 – amount owing before land can be sold | \$5,000 |