



POLICY

Financial Hardship Policy

1 Purpose

The purpose of this Financial Hardship Policy is to provide Council with a policy framework setting out the process of providing financial relief to individuals and businesses requiring assistance in the payment of rates and charges on the grounds of financial hardship.

The policy also aims to provide a clear understanding of the options and assistance available to property owners and ratepayers who are experiencing financial hardship and assist them in managing the payment of rates in a manner that is acceptable to both the Council and the property owner.

2 Scope

The policy applies to property owners and ratepayers within Hindmarsh Shire Council in accordance with sections 170, 171 and 171A of the *Local Government Act 1989* and well as the *Local Government Legislation Amendment (Rating and Other Matters) Act 2022*.

This policy shall apply to revenue included on the rates notice, such as rates, waste charges, interest and other relevant charges. It is important to note that this policy does not apply to fines issued under Council's Local Laws or any other Act.

Where financial hardship cannot be established, Council may avail itself of the collection options under Sections 180 and 181 of the Local Government Act 1989, to recover overdue amounts. These recovery methods include legal action and, in extreme circumstances, the sale of the property. In the implementation of this policy, due consideration will be given to determining the type of payment arrangement that is best suited to each property owner's individual circumstance and the need to observe compassion, respect and transparency in the assessment of financial hardship applications.

3 Definitions

CEO	means Chief Executive Officer of Hindmarsh Shire Council
Council	means the Hindmarsh Shire Council
Employee	means a person employed by Council, including the Chief Executive Officer, Directors, Managers, and any person engaged as a short term Employee or a contractor undertaking duties on behalf of Council.
Ratepayer	means any person, corporation, business or other entity owing money to Council in respect of rates and charges. This includes those who may not legally own a property, but who are required to pay rates and charges such as those determined by lease agreements.

4 Policy Statement

4.1 General Principles

Council will enforce the legislative powers available under the *Local Government Act 1989 (Act)* in the pursuit of outstanding rates and charges debts.

Council is committed to:

- Assisting Ratepayers who are experiencing financial difficulty;
- Ensuring that the collection process is transparent;
- Treating everyone fairly, consistently, respectfully and with sensitivity;
- Ensuring all Council Employees have the training and resources necessary to effectively and consistently manage ratepayer hardship; and
- Ensuring all applications and their subsequent determination and handling are strictly confidential.

Where Council Employees have identified that a ratepayer is experiencing financial hardship, outstanding rates and charges owed to the municipality shall be pursued in accordance with this policy.

Council will not use debt collectors or pursue legal action unless ratepayers refuse to engage and all other options have been exhausted.

4.2 Genuine Financial Hardship

Genuine Financial Hardship refers to a situation where a property owner is reasonably unable to discharge their financial obligations due to compassionate grounds or necessitous circumstances such as illness, unemployment, impacts of natural disaster, or other reasonable cause. Financial hardship involves an inability of the property owner to meet their financial commitments (bills), rather than an unwillingness to do so. Customer hardship can arise from a variety of situations. Common causes of hardship may include, but are not limited to:

- Loss of employment of the property owner or family member;
- Family violence;
- Family breakdown;
- Illness, including physical incapacity, hospitalisation, or mental illness of the property owner or family member;
- A death in the family; or

Other factors resulting in unforeseen change in the property owner's capacity to meet their payment obligations, whether through a reduction in income or through an increase in non-discretionary expenditure.

4.3 Applications for Hardship

A formal application for financial hardship must be completed and signed in front of a Justice of the Peace or other authorised officer and forwarded to Council's rates department.

Pursuant to Sections 170, 171 and 171A of the *Local Government Act 1989*, property owners may apply for the following:

- Deferral of rates and charges;
- Waiver of interest and legal charges invoiced to date; or
- Waiver of rates and charges.

The Rates Coordinator may make decisions pertaining to payment arrangements with ratepayers to assist with their financial obligations. However, the Chief Executive Officer will consider requests for interest to be held or waived. All applications requesting to have their rates and charges waived partially or in full will be referred to Council and considered in a closed Council meeting.

Any applications made under this policy and the associated procedure will be considered, however applications will only be granted where there is genuine financial hardship. Council generally does not waive rates, as this ensures that financial hardship assistance granted to one does not have a distributional effect on the rate base.

Council will take into consideration whether the applicant is seeking professional assistance for their financial hardship when making its decision.

Applicants will be formally notified of the decision as soon as is practically possible.

In addition to hardship, this policy will also cover compassionate grounds. This generally relates to immediate family illness or death up can also include:

- A sudden death in the family;
- Family violence;
- A life threatening illness or injury, acute or chronic pain or acute or chronic illness;
- Modifications to the home or vehicle to accommodate their needs or their dependents to accommodate a severe disability;
- The need to pay for palliative care for themselves or a dependent with a terminal medical condition;
- Expenses associated with a dependents death, funeral or burial; and
- Unable to work due to a medical condition and the support of Government assistance to pay living expenses.

4.4 Deferral of Rates and Charges

Under Section 170 of the *Local Government Act 1989*, Council may allow partial or full deferral of rates where they consider that paying rates and charges would create financial hardship for the applicant.

Deferral of rates and charges is made available to all property owners and ratepayers who satisfy the financial hardship eligibility criteria under this policy and will be granted based on the following conditions:

- The deferral ceases and the deferred rates and accrued interest rate are immediately payable if the property owners or ratepayer ceases to own or occupy the property on which the rates are imposed; and
- The deferral will be reviewed each year within one month of the issue of the annual 'Valuation and Rate Notice'; and
- An increase in the valuation of a property and a subsequent increase in rates cannot be considered grounds for a deferred payment of rates of their own accord.

4.5 Waiver of Rates and Charges

Under Section 171 of the *Local Government Act 1989*, property owners and ratepayers may apply for a full or partial waiver of rates and charges subject to Council confirmation of the following conditions:

- Waiver of rates and charges is only available to individuals experiencing financial hardship with regard to the rates on their primary or principal place of residence; and

- The applicant can provide a financial plan to show intent to pay future rates and charges; and
- The applicant is able to substantiate they are experiencing financial hardship and able to provide verifiable information to prove hardship on a needs basis, e.g. certified Statement of Financial Position from a qualified accountant or financial counsellor; and
- Waivers (excluding interest) must be recommended by an independent financial counsellor and applicant is able to provide documented support for a waiver from the financial counsellor or a welfare agency or government agency.

Council Officers will consider an application for a waiver or partial waiver of rates and charges where genuine financial hardship can be demonstrated and if granted, the waiver will apply only for the rating year in which the application was made and the previous financial year. Retrospective applications for a waiver of unpaid Rates and Charges greater than two years will be presented to Council for resolution. The application will be assessed by Council officers on the grounds of genuine financial hardship only and approved by Council resolution.

4.6 Waiver of Interest and Legal Charges

Under Section 171A of the *Local Government Act 1989*, property owners and ratepayers may have interest charges and legal charges, or part thereof, waived where they have demonstrated financial hardship, subject to compliance with the following conditions and approval by Council Officers:

Waiver will be granted only to:

- Property owners and ratepayers whose property is the sole or principal place of residence and is used exclusively for residential purposes;
- Farm land which is the sole or principal place of residence of the applicant;
- Commercial/industrial land owned and operated by the applicant.

An application for a waiver of interest charges will be considered where genuine financial hardship can be demonstrated and if granted, the waiver will be reassessed by officers bi-annually.

The Rates Officer will review applications in accordance with this policy and approve within financial delegations. The property owners and ratepayer will be advised in writing of the outcome of the application.

4.7 Payment Plans

On the application of a person, Council may enter into a plan with the person for the payment of a rate or charge which has not been paid by the date specified for payment. This can be for an unpaid rate or charge that is being paid in instalments, for which payment was deferred under section 170, that was waived in part under section 171 or 171A.

Council may determine:

- a. the duration of the payment plan; and
- b. the amount of each payment plan instalment; and
- c. the frequency of payment plan instalments; and
- d. any other terms.

The payment plan must be compliant with all provisions with relevant legislation.

The Council may cancel a payment plan at any time if the person is not complying with the terms of the plan. If a payment plan is cancelled, the amount owing becomes due and payable and may be recovered by the Council in accordance with section 180 of the *Local Government Act 1989*.

4.8 Discontinuation of Financial Hardship Assistance

Under Section 170(3) of the *Local Government Act 1989*, Councils can require repayments of deferred amounts if they consider that payment would no longer cause hardship, or if the land changes hands. Despite any payment agreement in place, outstanding rates and charges become immediately payable in the following circumstances:

1. In the case of a person, the property owner and/or ratepayer ceases to occupy the property applicable to the agreement.
2. In the case of a business, the property owner and/or ratepayer enters into administration or liquidation.
3. The applicable property is sold or transferred to another person or entity.
4. There is a material alteration to the ratepayer's circumstances and making the payment would no longer cause financial hardship to the person.

4.9 Defaults

Where payment arrangements have been made and the ratepayer has not followed the agreement without prior conveying of their circumstances to the rates department, this will be seen as a default.

The rates department will make reasonable attempts to contact the ratepayer to resolve the situation, as per the *Local Government Act 1989* and the *Local Government Legislation Amendment (Rating and Other Matters) Act 2022*.

4.10 Commencing Proceedings for Recovery of Unpaid Rates and Charges Debts

Council will not commence a proceeding under section 180(1) for an unpaid rate or charge that has not been deferred under section 170 or has not been the subject of a payment plan unless—

- (a) the Council, in writing—
 - a. notifies the person liable to pay the rate or charge of the arrears; and
 - b. advises the person of the payment options available including deferrals and payment plans; and
- (b) it has been at least 24 months since the person was notified and advised and the person has not deferred payment, entered into a payment plan or used any other available payment option.

Council will not commence a proceeding under section 180(1) for an unpaid rate or charge that has been deferred under section 170 unless—

- (a) the Council has sent a notice under section 170(3); and
- (b) the person has failed to make payment as required by the notice.

Council will not commence a proceeding under section 180(1) for an unpaid rate or charge that is subject to a payment plan.

Council will commence a proceeding under section 180(1) for an unpaid rate or charge that was subject to a payment plan unless it has been at least 24 months since the plan was cancelled.

4.11 Rate Recovery Sales

In accordance with s181 of the Act, a property may be sold to recover unpaid rates and charges where all other measures to collect the debt have been unsuccessful and all provisions of the Act have been satisfied. Any proposed sales must be endorsed by Council.

4.12 Financial Counselling

Council may recommend support services from the Financial & Consumer Rights Council of Victoria (FCRC) National Debt Helpline or other providers. The FCRC can help affected persons find a financial counsellor. The National Debt Helpline is a not-for-profit service that helps people in Australia tackle their debt problems. This is a Government service providing free, confidential counselling for people experiencing financial difficulty.

4.13 Conflict of Interest

All decisions, recommendations and approvals in this policy are subject to the conflict of interest provisions in the Staff Code of Conduct.

4.14 Appeal

Where an applicant for financial hardship is dissatisfied with the outcome of their application, they may request a review of the decision by outlining the grounds for the review. The request for a review of the decision must be in writing and addressed to the Chief Executive Officer.

If the applicant is still aggrieved by the decision of the Chief Executive Officer they may refer the matter to the Victorian Ombudsman.

5 Communication

This policy will be published on Council's website and made available at Council's Customer Service Centres for public access.

6 Charter of Human Rights

This policy does not unreasonably infringe any human rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

7 Responsibility

Policy Owner: CEO

8 Supporting Documents

Council Documents
Hindmarsh Shire Council Financial Hardship Application Form Hindmarsh Shire Council Annual Budget (including Fees & Charges, Rating Strategy) Hindmarsh Shire Council Councillor Code of Conduct Hindmarsh Shire Council Staff Code of Conduct Hindmarsh Shire Council Instrument of Delegated Staff Purchasing Authorities
Legislation
<i>Local Government Act 1989</i> <i>Local Government Act 2020</i> <i>Local Government Legislation Amendment (Rating and Other Matters) Act 2022</i> <i>Family Violence Protection Act 2008</i>

<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>

9 Document control

Financial Hardship Policy		Policy Category	Council
Version Number	1.02	Policy Status	APPROVED
Approved/Adopted By	Council	Approved/Adopted on:	24 July 2019
Responsible Officer	Director Corporate and Community Services		
Version History	Date	Version	Description
	June 2016	1.01	Original Policy
	March 2019	1.02	Update to format of Policy. Change in approval requirements for interest waiver.
	October 2022	1.03	Update format of Policy, increased clarity across implementation areas.