

Cardinia Shire Council

Rates Recovery and Financial Hardship Policy

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1 Statement of Intent

This policy aims to assist the Council in its dedication to the prompt recovery of rates and charges, ensuring sufficient funding for the ongoing services and capital projects that benefit the community, while also fulfilling its overall business management and corporate governance obligations.

Furthermore, this policy reinforces Council's commitment to proactively engage with ratepayers facing challenges in paying rates and charges, offering support and viable options to assist them in situations of financial hardship.

The Council imposes rates and charges on properties in compliance with the *Local Government Act 1989* and the *Fire Services Property Levy Act 2012*, including the updates to the *Local Government Act 1989* established by the *Rating and Other Matters Amendment 2022*. As such this policy aligns with the legislative requirements in offering various payment options, deferrals and waivers to facilitate the payment process, whilst also preserving Council's revenue requirements.

If a property has outstanding amounts exceeding the thresholds specified in this policy and there has been inadequate communication from residents, the Council may opt to pursue debt recovery measures in accordance with sections 180 and 181 of the *Local Government Act 1989*.

2 Policy Objectives

The objectives of the Rates Recovery and Financial Hardship Policy are:

- To establish clear guidelines for the Council, Council Staff, and the Debt Recovery Contractor to facilitate effective and consistent recovery of overdue rates and charges; and
- To offer support to ratepayers facing financial hardship who cannot make payments through the standard options available; and
- To assure ratepayers that they will be treated consistently, equitably, and with confidentiality.

2.1 Policy Strategies

The following strategies can be used to accomplish the Policy Objectives:

- Generate notices for rates and charges that specify outstanding amounts, due dates, and available payment methods, along with sending courtesy reminders for overdue payments after the original due dates;
- Initiate legal action if the outstanding amount meets the criteria outlined in this policy;
- Evaluate the possibility of selling the property for substantial debts when other recovery efforts have not succeeded, provided the outstanding amount aligns with the criteria in section 181 of the *Local Government Act 1989*; and
- Review requests from ratepayers to modify standard payment options and establish Payment Plans, particularly in situations of financial hardship, taking into account applications made under sections 170, 171, 171A and 171B of the *Local Government Act 1989*.

2.1.1 Policy Related Legislation

This policy applies to ratepayers of Cardinia Shire Council in accordance with the following legislation as outlined below.

Legislation	Relevant Sections (if applicable)
<i>Local Government Act 1989</i>	Section 155 defines the applicable rates and charges covered by this policy Section 170 allows Council to defer the payment of rates, charges and interest Section 171 allows Council to waive the whole or part of any rates, charges and interest Section 172 allows Council to raise interest on unpaid rates or charges
<i>Local Government Legislative Amendment (Rating and Other Matters) Act 2022</i>	
<i>Penalty Interest Rate Act 1983</i>	
<i>Privacy and Data Protection Act 2014 (Vic)</i>	
<i>Fire Services Property Levy Act 2012</i>	Section 27 and 28 allows Council to defer or waive the levy or interest. Section 30 requires Council to raise interest on unpaid levies.

3 Payment Options and Recovery of Overdue Rates Processes

Ratepayers may utilise one of the following standard payment options available to them as listed on their Rates notices:

- Four Payments via set instalment dates payable on or before the last day of September, November, February & May each rating year in accordance with section 167(2) of *Local Government Act 1989*;
- Payment Plan for weekly, fortnightly or monthly payments over the rating year by direct debit, BPAY or other manual payment methods;

3.1 Late Payment Penalty Interest

Interest will be applied to all overdue amounts at the highest rate allowed by the State Government as stipulated in sections 172 and 172A of the *Local Government Act 1989*. If the Minister has not set a maximum interest rate under section 172A, interest is to be calculated in accordance with section 172(2) as in force immediately before the commencement of section 16 of the *Local Government Legislation Amendment (Rating and Other Matters) Act 2022*, being the penalty interest rate as set by the Attorney-General in accordance with section 2(1) of the *Penalty Interest Rates Act 1983*.

3.2 Recovery of Overdue Rates

If ratepayers fail to make their payments according to one of the standard options outlined in **Section 3**, and there is no approved Payment Plan as per **Section 4.1**, Special Charge Schemes Payment Plans as per **Section 4.2** or an approved Hardship Application as per **Section 4.3**, further steps will be initiated to recover the amounts owed to the Council as follows.

3.2.1 Debt Recovery Process

After the payment deadlines specified in sections 167(2) or 171B of the *Local Government Act 1989* have lapsed, an Overdue Payment notice will be issued for all properties with outstanding amounts that meet or exceed the figure indicated in item 1 of the threshold schedule in this policy.

Ratepayers will be requested to provide payment within 14 days of notice issue date.

If a ratepayer eligible under section 180 of the *Local Government Act 1989* does not respond to the Overdue Payment notice - either by paying the full amount or by requesting an acceptable Payment Plan as outlined in **Section 4** of this policy - the account will be handed over to the Council's Debt Recovery Contractor. A Solicitor's letter demanding payment within 7 days will be sent if the outstanding amount is equal to or greater than the amount specified in item 2 of the threshold schedule in this policy.

Ratepayers who do not respond to the Solicitor's final demand letter - either by settling the debt in full or by requesting a suitable Payment Plan according to **Section 4** of this policy - will be managed by the Council's Debt Recovery Contractor, who will initiate further legal proceedings. This action will only be taken for ratepayers where the amounts owed meet or exceed the threshold indicated in item 3 of the threshold schedule in this policy, as legal action incurs considerable costs that will be charged to the ratepayer.

A Complaint will be drafted and submitted to the Magistrates Court for processing. Once the Complaint is filed, the related legal costs will become chargeable. After the Complaint is issued by the Court, it will be served to the ratepayer, who must take one of the following actions within 21 days of service:

- Pay the claim in full plus costs;
- Enter into a Payment Plan under **Section 4**; or
- Lodge a completed Notice of Defence with the Court (thereby giving notice of their intention to dispute the claim)

If the ratepayer does not complete any of the aforementioned actions by the end of the 21-day period, an application will be submitted to the Court for an Order against the ratepayer for the total amount of the debt plus associated costs. Once an Order is granted, we will review the ratepayer's history to identify the most suitable execution measures for debt recovery:

- Summons for Oral Examination (ratepayer is interviewed by the Clerk of Courts regarding their financial situation and intentions in relation to repaying the debt);
- 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);
- Rent Demand (on the tenant of a rented property);
- Warrant to seize goods (some goods are not able to be seized like necessary household goods, tools of trade and low valued motor cars);
- Garnishee of wages; and
- Sale of property (refer to **Section 3.3** of this policy).

Once a debt has been assigned to the Council's Debt Recovery Contractor, it is advisable that all negotiations with the ratepayer be conducted by the Contractor.

3.2.2 Four Instalments

Where rates are still unpaid 14 days after the final payment date of the fourth instalment, recovery actions for the overdue rates may be initiated in accordance with **Section 3.2.1** of this policy

3.2.3 Payment Plans

If the deadline for payment specified in section 171B of the Act has elapsed and the ratepayer has missed three or more payments, the payment plan will be terminated. Consequently, recovery actions for the overdue rates may be initiated in accordance with **Section 3.2.1** of this policy.

3.3 Sale of Property

In addition to the debt recovery methods available through the legal system, section 181 of the *Local Government Act 1989* grants Council the authority to sell property under the following conditions:

- Rates and charges are overdue by more than three years; and
- There is no suitable Payment Plan in place for settling the overdue amounts; and
- A Court order mandates the payment, or partial payment, of the overdue rates and charges.

This action may be pursued if any of the following criteria are met, considering the ratepayer's repayment history and capacity to repay the debt, as well as their age, health status, and family circumstances.

3.3.1 Vacant Land

If the land is vacant and the total outstanding amount exceeds the figure specified in item 4 of the threshold schedule or surpasses 25% of Council's current Capital Improved Value (CIV).

3.3.2 Improved Commercial and Industrial Land

For properties categorised as Commercial or Industrial, if the total amount owed exceeds the figure indicated in item 5 of the threshold schedule or exceeds 25% of Council's CIV.

3.3.3 Residential Land

- a) For owner-occupied residential dwellings, if the total outstanding amount exceeds the figure stated in item 6 of the threshold schedule or exceeds 50% of Council's CIV.
- b) For residential dwellings that are not owner-occupied (such as rental or investment properties), if the total amount owed exceeds the figure listed in item 7 of the threshold schedule or surpasses 25% of Council's CIV.

3.3.4 Farmland

For properties designated as Farmland with an owner-occupied residential dwelling, if the total amount owing exceeds the figure shown in item 8 of the threshold schedule or exceeds 50% of Council's CIV.

3.3.5 Other Land

For all other types of land, if the total amount owed is greater than the figure indicated in item 9 of the threshold schedule or exceeds 25% of Council's CIV.

3.4 Thresholds Schedule – Rate Recovery and Hardship

Item	Rate Recovery and Hardship Policy Section	Amount
1	Section 3.2.1 – amount owing before issue of Late Payment Advice	\$100.00
2	Section 3.2.1 – amount owing before issue of solicitor letter	\$1,000.00
3	Section 3.2.1 – amount owing before issue of Magistrates Court Complaint	\$2,500.00
4	Section 3.3.1 – amount owing before land can be sold	\$5,000.00
5	Section 3.3.2 – amount owing before land can be sold	\$10,000.00
6	Section 3.3.3 (a) – amount owing before land can be sold	\$20,000.00
7	Section 3.3.3 (b) – amount owing before land can be sold	\$10,000.00
8	Section 3.3.4 – amount owing before land can be sold	\$20,000.00
9	Section 3.3.5 – amount owing before land can be sold	\$5,000.00

4 Payment plans and Financial Hardship

Ratepayers may apply for the following:

- Payment plans
- Financial Hardship payment plans
- Deferral of rates and charges
- Waiver of penalty interest and legal charges invoiced to date
- Waiver of rates and charges

4.1 Payment plans

If a ratepayer is unable to make payments using the standard options outlined in **Section 3** of this policy, they may apply for a Payment Plan. According to section 171B of the *Local Government Act 1989*, the Council has the authority to establish a Payment Plan with an individual for the payment of rates or charges, including any interest that may have already been incurred under section 172. These arrangements can be initiated at any point during the recovery process, but are contingent upon the following conditions:

1. All requests for Payment Plans must be submitted either in writing, via electronic or paper application, or entered via phone or in person with a Rates Officer at Council on 1300 787 624.
2. If there is a default in the terms of the Payment Plan, the Council may cancel the plan after notifying the ratepayer. The outstanding amount will then become due and payable, and the Council may initiate further debt recovery actions in accordance with section 180 of the *Local Government Act 1989* and **Section 3.2.1** of this policy.
3. Council can accommodate different types of payment plans, ensuring that minimum payments cover the total rates balance due at the time of entering the Payment Plan and has balance paid by end of the current rating year. Ratepayers unable to meet this minimum repayment should be evaluated under the hardship provisions outlined in **Section 4.3** of this policy.

4. To be eligible for a Payment Plan, ratepayers must choose from one of the following payment frequencies:
 - Weekly
 - Fortnightly
 - Monthly
5. Payment Plans between ratepayers and the Council will remain in effect until one of the following occurs:
 - All overdue amounts have been fully paid
 - Payments fulfill the instalment requirements specified in section 167 of the Act
 - The ratepayer fails to adhere to the agreed-upon payment amounts and/or frequencies
 - All ratepayer(s) (or their estates) responsible for the rates and charges at the time the Payment Plan was agreed to transfer ownership to another individual or entity.
6. Additionally, any rates and charges that become overdue while a Payment Plan is active will be automatically added to the total amount agreed upon without further notification to the ratepayer.
7. Applications that do not comply with the above criteria should be referred to the Recoveries Officer for review and approval.
8. If a ratepayer fails to comply with their agreement and a Payment Plan has been cancelled, the Council may choose to:
 - Require the ratepayer to manage other or future Payment Plans through a Direct Debit agreement with the Council; or
 - Decline any future Payment Plan proposals from that ratepayer.

Therefore, Council encourages Ratepayers to make regular contact with Council if they are having difficulty keeping up with the agreed plan to avoid this occurring.

4.2 Special Charge Schemes Payment Plans

If a ratepayer is unable to make payments using the standard options outlined on Special Charge Scheme Policy, they may apply to Council for a custom Payment Plan. According to section 171B of the *Local Government Act 1989*, the Council has the authority to establish a Payment Plan with an individual for the payment of rates or charges, including any interest that may have already been incurred under section 172. These arrangements can be initiated at any point but are contingent upon the Ratepayer contacting Council via phone or email to discuss payment plan options specifically available for Special Charge Schemes.

Alternative payment plans may be considered for ratepayers experiencing financial hardship who are having difficulty making payments in accordance with the instalment plan set by the scheme under the Special Charge Scheme Policy.

Penalty interest and legal action will be put on hold for properties with an active payment plan. Defaults and poor payment history may result in Council cancelling the payment plan, reinstating interest charges and commencing legal action. It may also result in Council declining payment plans in the future. Ratepayers should make regular contact with Council if they are having difficulty keeping up with the agreed plan to avoid this occurring.

4.3 Financial Hardship

Financial hardship refers to individuals who face challenges in meeting their rates and charges obligations due to changed circumstances. This may include job loss, health issues, bereavement, natural disasters, domestic violence, marital breakdown, gambling, or substance abuse. Some of the indicators that may highlight an individual's need for additional assistance are listed below:

- Demonstrated inability to pay the amounts owing to Council.
- Evidence of demonstrated downturn of income or turnover.
- Referral from a financial counselling agency or community organisation.
- Evidence of health issues.
- Any instance where a customer is identified as being affected by family violence.
- Evidence of current unemployment such as Centrelink Statement, Work Cover, etc.

- Demonstrated impact from a natural disaster, or other similar event.

Customers who are unable to meet payment plan agreements outlined in **Section 4.1**, are required to submit a Rates and Charges Financial Hardship Application for their eligibility to be assessed. This application is available via an online form on Council's website, or a hard copy application can be obtained from our Civic Centre or sent via email or post.

The Council must exercise discretion in determining whether a property owner is genuinely facing financial hardship as opposed to requesting to postpone payment. The Council may ask for supporting documentation or evidence to substantiate the claim of hardship.

If a financial hardship application is approved, the typical outcome will be that no interest will accrue, and no legal action will be initiated regarding any outstanding rates and charges for the duration of up to 12 months. This section of the policy aims to provide temporary leniency for ratepayers experiencing extenuating circumstances, allowing applicants time to reassess their financial situation. Generally, the Council's policy stipulates that financial hardship approval will only be considered under the following circumstances:

1. For properties primarily used for residential purposes or classified as farmland, where the applicant resides on the property as their sole or principal residence, or can demonstrate significant difficulty in generating income from or selling or liquidating other owned assets.
2. If the applicant demonstrates they have a reduced or low income (such as receiving a pension or unemployment benefits) by submitting a hardship application with relevant financial information (including income, expenses, assets, and liabilities) that illustrates their inability to pay the current year's rates and charges within the required time.
3. If the current Capital Improved Value (CIV) of the property for which assistance is requested is equal to or greater than the relevant current average differential rating valuation, and the applicant can prove they cannot liquidate that asset or provide substantial justification for not selling it in favour of a more affordable solution.
4. If deemed necessary by the Council, the applicant must have participated in an interview with a Financial Counsellor, completing a hardship application that includes relevant financial details (income, expenses, assets, and liabilities).

4.3.1 Financial Hardship enquiry and assessment process

Initial enquiries can be made in the first instance to the Rates Department on 1300 787 624 or email at mail@cardinia.vic.gov.au.

All applications, in the first instance, will be processed and reviewed by Recoveries Officer with further review and approval required by Rating Services Co-ordinator. Additional relevant or substitute supporting information may be requested to assist with the application.

4.4 Deferral of Rates and Charges

According to section 170 of the *Local Government Act 1989*, ratepayers who are unable to enter into a suitable payment plan, may request to defer the payment of their rates and charges. Penalty interest and legal action will be put on hold during the agreed deferral period.

Agreed deferrals will be terminated, and the rates and charges will be due in full upon the following:

- the property being sold or transferred to another name, or
- the ratepayer becoming deceased, or
- a material alteration to the ratepayer's circumstances.

4.4.1 Short term deferrals

Short term deferrals of 3 months at a time can be applied without a financial hardship application at the discretion of the Recoveries Officer.

Where a short-term deferral has already been granted, Council will request a financial hardship application for subsequent short-term deferrals.

4.4.2 Long term deferrals

Longer term deferrals of 12 months or more will be subject to the following conditions:

- The ratepayer is:
 - the owner of the property, which is their primary place of residence, or
 - the single (only) property owner
 - able to demonstrate they are experiencing unforeseen financial hardship
- the agreed deferral period will be dependent on the individual circumstances of the applicant and subject to an annual review process.
- Council encourages ratepayers to seek advice from a suitably qualified financial advisor or counsellor. Free financial counselling services can be found at [Cardinia Support | Service Directory](#) which can assist Ratepayers to have a strategy in place to settle the outstanding rates and charges following the conclusion of the agreed deferral period.
- If the property subject to the request for deferral is not residential in nature, independent evidence from the applicant that financial hardship is being experienced, such as a letter from the applicant's accountant, auditor or bank manager is required.

4.5 Waiving of Penalty Interest

A waiver of penalty interest may be considered by Council in limited circumstances including

- in the event of an administrative issue, error or omission, or
- the ratepayer is experiencing financial hardship and is making an effort to pay the outstanding rates and charges in accordance with their capacity to pay, or
- on compassionate grounds which contributed to the late payment.

4.6 Waiving of Legal Costs

A waiver of legal costs may be considered by Council in limited circumstances including

- in the event of an administrative issue, error or omission, or
- on compassionate grounds which contributed to the late payment.

4.7 Waiving of Rates and Charges

Except for the most exceptional circumstances, Council will not waive any other rates and charges but will rather encourage the person to enter into a payment plan, or deferral.

Waiving of rates and charges may be considered in cases of extreme financial hardship subject to the following conditions:

- The request for a waiver of rates and/or charges must be made in writing
- Available only to individuals experiencing extreme financial hardship
- The applicant must be able to provide additional information to prove the extreme financial hardship
- Waiver to be recommended by a suitably qualified independent financial counsellor, or otherwise approved by the General Manager Corporate Services, Chief Executive Officer or through a Council resolution
- Any waiver is a one off in response to the circumstances presented at the time

5 Responsibilities

Reasonable payment plans or extended payment plans may be approved by a Rates Officer without a financial hardship application.

Applications for Financial Hardship will be reviewed and processed by the Recoveries Officer with further review and approval required by Rating Services Co-ordinator, with a recommendation put forward for approval of any waivers or long-term deferrals.

Penalty interest waiver requests must be sent in writing to the Recoveries Officer for review and approval from the Rates Specialist or Rating Services Coordinator.

Legal cost waivers must be recommended by the Recoveries Officer for approval to Rating Services Co-ordinator only.

Rates and charges waivers are to be submitted and approved by:

General Manager Corporate Services	Up to \$20,000
Chief Executive Officer	Over \$20,000

6 Appeals

An applicant may seek a review of a decision made by the Recoveries Officer or Rating Services Co-ordinator, which will be managed in accordance with Council's Complaints Policy.

If an applicant is not satisfied with the review, the applicant may refer the matter to the Victorian Ombudsman.

7 Related documents

Type of document	Title and/or document reference
Commonwealth/Victorian legislation	<i>Local Government Act 1989 (the Act)</i> <ul style="list-style-type: none">• Section 155 defines the applicable rates and charges covered by this policy• Section 170 allows Council to defer the payment of rates, charges and interest• Section 171 allows Council to waive the whole or part of any rates, charges and interest• Section 172 allows Council to raise interest on unpaid rates or charges <i>Local Government Legislative Amendment (Rating and Other Matters) Act 2022</i> <i>Penalty Interest Rate Act 1983</i> <i>Privacy and Data Protection Act 2014 (Vic)</i> <i>Fire Services Property Levy Act 2012</i> <ul style="list-style-type: none">• Section 27 and 28 allows Council to defer or waive the levy or interest.• Section 30 requires Council to raise interest on unpaid levies.
Strategies	Revenue and Rating Plan
Form	Rates and Charges Payment Plan Application Form Rates and Charges Financial Hardship Application Form
Policies	Instrument of Sub-Delegation by the Chief Executive Officer Special Charge Scheme Policy

8 Glossary of terms

Council – Cardinia Shire Council, being a body corporate constituted as a municipal Council under the *Local Government Act 1989*.

Ratepayer – the person(s) liable to pay the rates and charges. This may be the property owner or a tenant who under the lease agreement is liable to pay the rates and/or charges.

Rates and charges – refers to the Annual Rates and charges and Special Charge Schemes as defined below.

Annual Rates and charges – the rates and charges shown on your annual rates notice including Council rates, the Fire Services Property Levy and the waste charges which are charged in accordance with

sections 158, 159 and 162 of the *Local Government Act 1989*, and section 21 of the *Fire Services Property Levy Act 2012*.

Special Charge Schemes – section 163 of the *Local Government Act 1989* empowers Council to levy a special rate or special charge on rateable properties to fund or part fund works or services that are of special benefit to those properties. Refer to the Special Charge Scheme Policy available on Council's website for more information about Special Charge Schemes.

Deferral – a postponement of payment, in whole or in part, and can be for a specified period.

Waiver – not requiring payment for an agreed amount that will be written off.

Financial Hardship – experiencing difficulty paying the outstanding rates or charges due to a change in circumstances such as loss of employment, ill health, death in the family, natural disasters, family violence, marriage breakdown, gambling or substance abuse.

Extreme Financial Hardship – extreme situations such as an emergency event like a bushfire where the ratepayer's residence has been burned down and they have incurred other excessive costs such as costs to rebuild their home.

Compassionate Grounds – Short term circumstances of a compassionate nature that if deferment of payment is not granted would lead to Financial hardship.

Primary residence – the property which is considered to be the main living location.

Financial Counsellor – A free service provided to ratepayers in financial difficulty that is independent of the Council and the Ratepayer.

Payment Plan – agreement to pay the council rates and/or charges on a regular basis such as weekly, fortnightly or monthly instead of the standard quarterly instalments. Council has several payment options for payment plans including Centrepay deductions, Direct Debit and Bpay.

Municipal Rates Concession – concession applicable under the *State Concessions Act 2004*.