

# Strathbogie Shire Council Rates and Charges Collection and Hardship Policy

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October 2022



# Rates and Charges Collection and Hardship Policy

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## POLICY

### 1. PURPOSE

*The Local Government Act 1989* (the Act) provides legislated payment options to facilitate the payment of rates and charges. In addition to these, Council provides additional payment frequencies to assist ratepayers to manage their debts

The Policy allows Council to ensure that monies owed are recovered in a manner acceptable to Council and the person/organisation experiencing financial hardship. Hardship can arise in numerous ways for our community. Having the means available to temporarily assist the community member to allow them time to overcome their hardship in a sensible and sensitive way is appropriate.

Under *Section 170* of the Act, Council may defer, in whole or part, any payment due on the grounds of hardship. The Act goes on to say Council may waive a whole or part of any rate or charge or interest if a person is suffering financial hardship (*Section 171*).

The difference between a waiver and a deferral is that a deferral suspends payment for a period of time whereas a waiver permanently exempts payment of the fee or charge under discussion

Applications for waiver and deferral will be individually assessed against the criteria stated in this Policy.

*Section 170* of the Act enables Council to defer the payment for rates, charges and interest.

*Section 171* of the Act enables Council to waive the whole or part of any rate, charge or interest for particular classes of ratepayers e.g. pensioners.

*Sections 171 & 171A* of the Act enable Council to waive rates and charges, based on financial hardship, upon application from the ratepayer

*Section 171 (4) (b)* of the Act states that: "A person may only apply for a waiver in respect of rateable land or a part of rateable land which is used exclusively for residential purposes by that person and is that person's sole or principle place of residence."

*Section 172* of the Act enables Council to charge interest on unpaid rates and charges.

*Section 181* of the Act, enables Council to sell land or cause land to be transferred to the Council to recover unpaid rates and charges.

The penalty interest rate is fixed by the Attorney-General under *Section 2* of the *Penalty Interest Act 1983* and reviewed each year.

## **2. POLICY STATEMENT**

The Rates and Charges Collection and Hardship Policy applies to all payments of rates and charges but particularly to applications to Council seeking alternate arrangements for payment of rates. Typical applicants for arrangements include, but are not limited to, ratepayers suffering financial or emotional hardship.

The ratepayer must request a review of eligibility for financial hardship relief, on an annual basis.

The purpose of this Policy is to establish a framework for Strathbogie Shire Council to manage and assist Ratepayers in:

- the payment of rates and charges, including the Fire Services Levy
- applications to enter into special payment arrangements
- applications for financial hardship
- applications to defer payment of rates and charges
- applications to have rates and charges waived
- levying of penalty interest on outstanding rates and charges.

## **3. APPLICATION OF THIS POLICY**

This Policy applies to any person who is levied rates or charges, including the Fire Services Levy, within the municipality.

The Policy on waiving of rates and charges applies to rateable land which is used exclusively for residential purposes by that person and is that person's sole or principle place of residence in accordance with Section 171(4) (b) of the Act.

The Policy applies to any costs associated with the rateable property including Animal Registrations, Fire Preventative Clearing, Government Regulatory fees and charges including Special Charge Scheme contributions which remain a charge on the property in certain circumstances.

This Policy does not deal with the waiving of hire charges for Council facilities or any other charges that are not related to rateable land used for residential purposes.

In certain circumstances it is sometimes necessary for a confidential report to be placed before Council to outline the reason why rates or charges (including special charges) on a particular property should remain as a charge with interest accruing, until such time as the property will be sold in the future.

These circumstances can apply to absentee owners who may be overseas, complex legal situations involving estates or the winding up of businesses or companies or the inability of a property owner to act due to adverse health circumstances.

Eventually the Council will recover all accrued rates and interest charges once the property is offered for sale.

#### 4. ACCOUNTABILITY AND RESPONSIBILITIES

The implementation of this policy is undertaken by the Rates Department with approval provided by those listed in the table of delegation. Decisions on actions to be taken can be performed by the following officers.

All outstanding debt recovery for properties which are to be sold to recover debt owed under Section S181 of the *Local Government Act 2020* must be approved by Council.

Outstanding Value	Delegation
Less than \$5,000	Revenue Coordinator
\$5,001 - \$10,000	Chief Finance Officer
\$10,001 - \$20,000	Director People and Governance
\$20,001 and over	Chief Executive Officer
S181 sale of property	Council

#### 5. PAYMENT BY INSTALMENT

Section 167(1 & 2A) of the Act provides that a Council may allow a person to pay a rate or charge in 4 instalments or in a lump sum. Strathbogie Shire Council will accept a lump sum payment option however to avoid interest charges on rates, the lump sum payment must be paid on or before the first instalment due date of 30 September.

For Ratepayers who pay by instalments, the due dates for payment in each financial year is set by the Minister and declared in the Government Gazette. They are as follows:

##### Payment Due Dates

First instalment	30 September
Second instalment	30 November
Third instalment	28 February
Fourth instalment	31 May

If any of the above dates fall on a non-business day, the payment date is moved to the next business day.

#### 6. INTEREST

Interest will be charged on all amounts that are overdue in accordance with Section 172 of the Act at the rate set under the *Penalty Interest Rates Act 1983*.

Payments received after the full payment due date will be charged interest from the date the rates and charges were declared.

Section 172 (2)(b)(iii) states that:

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*“If the payment was payable either in instalments or in a lump sum and the first instalment was not paid by the date it was due, on and from the date on which the rate or charge was declared”*

*“Instalment payments received after the instalment due dates will be charged interest from the instalment due date”.*

Section 172 (2) (b) (ii) states that:

“If the payment was payable either in instalments or in a lump sum, and neither the first instalment nor the lump sum were paid by the dates, the first instalment or the lump sum were due, on and from the date on which each missed instalment was due”

Interest on overdue rates is calculated as follows:

- 25% of rates (interest back dated to 30 September)
- 25% of rates (interest back dated to 30 November)
- 25% of rates (interest back dated to 28 February)
- 25% of rates (interest backdated to 31 May).

## **7. SPECIAL PAYMENT ARRANGEMENTS**

Where ratepayers are unable to make their payments by any of the standard options listed above, a Special Payment Arrangement may be entered into.

The initial review for a ratepayer to enter into a special payment arrangement sits with the Revenue Coordinator if the amount of the current year and any outstanding amounts will be paid by 31 May.

If the arrangement will not see this payment being cleared, then the Chief Finance Officer must approve the lesser payment amount.

These arrangements can be made at any time during the recovery process but are subject to the following conditions:

- All requests for Special Payment Arrangements are to be made in writing by the rate payer.
- Interest will continue to accrue on overdue amounts unless a waiver of interest application has been approved.
- Any default from the Special Payment Arrangement may result in legal action to recover the debt without further notice.
- Centrelink recipients those who are granted approval for Special Payment Arrangements are requested to utilise to pay their arrangement via CentrePay.

Council will be flexible regarding the type of arrangement entered into in order to best suit the ratepayer's circumstances but as a minimum, payments over a 12-month period must cover the annual rates and charges and any interest applied to arrears. Ratepayers who are unable to make this minimum repayment should be assessed under the financial hardship provisions.

Approval to undertake Special Payment Arrangements will be under the delegation of authority by Council Officers as per section 4 above.

## **8. POLICY ON THE DEFERRAL OR WAIVER OF RATES OR CHARGES**

### **8.1 Deferral**

Ratepayers may have rates and charges, or part thereof, deferred subject to compliance with the following conditions:

- Using the Council's "Rates and Charges Financial Hardship Application Form", the ratepayer must be able to demonstrate that they are experiencing undue and unusual financial hardship. Applicants will need to demonstrate having sought advice from an independent financial counselling service for assistance with making arrangements to pay bills, debt management, budgeting and planning for the future payment of charges
- A confidential statement must be submitted by the ratepayer as evidence of such circumstances.
- The acceptance by the ratepayer that interest will accrue on the deferred rates and charges
- Where a ratepayer has complied with above conditions, the rate or charge or part thereof may be deferred until the property is sold or transferred or the ratepayer's financial circumstances improves

The ratepayer must request a review of eligibility for financial hardship relief, on an annual basis.

Assessment of financial hardship will be a subjective assessment having regard to the applicant's income and expenses and obligations.

### **8.2 Waiver of Interest**

Rates and charges will generally not be waived. However, under *Section 171* of the Act, Council may waive rates and charges if Council considers that a ratepayer is suffering financial hardship. Ratepayers may have interest, or part thereof, waived subject to compliance with the following conditions:

- The ratepayer must be experiencing financial hardship.
- The property for which the interest waiver is being considered must be used exclusively for residential purposes and must be the ratepayer's principal place of residence in accordance with Section 171 (4) of the Act; and
- The ratepayer must request in writing a review for eligibility of financial hardship using the "Rates & Charges Financial Hardship Application Form".

Determination on applications for waiver of rates and charges will be subject to Council approval as per *Section 171* of the Act.

~~Determination on~~ Recommendations for applications ~~for requesting a~~ waiver of interest and charges will be recommended made by the Chief Financial Officer to the be approved by

~~either CEO or~~ Director People & Governance and CEO for –their consideration and determination approval.

Determination on applications for deferral of rates and charges will be subject to approval by the Director People & Governance and CEO. ~~approval.~~ Being a recipient of Government assistance is not enough grounds for claiming financial hardship.

Assessment of financial hardship will be a subjective assessment having regard to the applicant's income and expenses and obligations.

If a deferral of rates and charges is approved:

- The property will be flagged as a rates deferment property and no debt recovery action will be taken; and
- A letter will be sent to the ratepayer annually seeking further application to confirm that the hardship still exists in accordance with the time frame of the deferral.

An indefinite deferral may result in the rates not being recovered until the sale of the property, or when the property is sold upon the ratepayer's death. Rates and charges are a first charge on a property and are always recoverable before any other charges on the property are paid.

The deferral will be deemed withdrawn based on any of the following conditions:

- The ratepayer advises that the hardship conditions no longer exist
- Periodic confirmation of ongoing hardship is not received within 14 days of the due date of the request
- The ratepayer no longer owns or occupies the property; and/or
- The ratepayer has defaulted in meeting any agreements with council in regard to the deferral
- Full payment is made.

If a waiver of interest is approved:

- The property will be flagged as an interest waiver property; and
- Subject to repayment agreements, a letter will be sent to the ratepayer annually seeking further application to confirm that the hardship still exists in accordance with the time frame determined at the time the interest waiver was granted.

The waiver will cease to apply based on the same conditions of the deferral.

**Note:** Council has the authority to withdraw any agreement at its discretion.

If a waiver of rates is approved:

- The property record will be updated to reflect the write-off of the particular debt that has been waived and interest will therefore not accrue; and
- Future rates will continue to be applied to the property and a fresh application for waiver on hardship grounds will be required each year.



## **9. REPORTING ON APPLICATION OF THE POLICY**

The Chief Finance Officer will report to Council on an annual basis statistics pertaining to debt outstanding, interest written off and any further actions around this policy.

## **10. RATE RECOVERY PROCESS**

Where there is no formal annual Special Payment Arrangement or where there has been a default in a Special Payment Arrangement and where no approved financial hardship application exists, the following will occur:

### **Quarterly Instalments**

Following the Instalment Due Date in any given rateable year a reminder notice will be issued to ratepayers who have more than \$250.00 rates outstanding, requesting payment within 14 Days.

Failure to respond to the notice of reminder (by making payment in full or requesting a suitable Special Payment Arrangement) will result in the account being referred to Council's debt collection agency for further action. Interest will be applied to the outstanding amount.

<b>Action</b>	<b>Stages from Due Date</b>
Reminder Letter	14 days
Interest Charged	0 days
Debt Collection Agency	21 days

Council's Debt Collection Agency will issue a Letter of Demand requesting payment within 30 days.

### **Solicitors Letter of Demand**

Ratepayers who fail to respond to the Reminder Notice (by making payment in full or requesting a suitable Special Payment Arrangement) will be referred to Council's debt collection agency for a letter demanding payment within 21 days. These letters will generally only be issued on those ratepayers who have an amount outstanding of \$1,500.00 or more with legal costs to be incurred by the ratepayer.

### **Legal Action**

Ratepayers who fail to respond to the Solicitor's letter will be referred for legal proceedings to be commenced. A Summons (Complaint) will be issued to those ratepayers who have an amount outstanding of \$2,000.00 or more as the costs of legal action are significant and are charged to the ratepayer. This amount will be reviewed annually in light of applicable court and legal fees. (Pursuant to the Magistrates Court civil procedure rules 2010 - scale of costs).

Once a debt has been placed in the hands of Council's debt collection agency, all negotiations with the ratepayer are to be handled by that agency. Copies of Rate Notices can be provided direct but should be recorded in the debt collector file for information.

Once the debt collection agency and their solicitors have prepared and lodged a Summons/Complaint with the Court for issue, the associated legal costs become chargeable. It is then served on the ratepayer who must, within 21 days from the date of service:

- pay the claim in full plus costs; or
- request a suitable Special Payment Arrangement; or
- 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:

- 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 vehicles)
- Garnishee of wages
- Centrepay/Centrelink payment
- Sale of property (refer next section).

## **11. SALE OF PROPERTY SECTION 181 LOCAL GOVERNMENT ACT**

In addition to the debt recovery procedures available through the legal system, under *Section 181* of the Act, Council has the power to sell land or cause land to be transferred to the Council to recover unpaid rates and charges.

*Section 181* recovery action may apply if:

- there are Rates and Charges (including enforcement costs and interest) which are more than three years overdue; and
- there is no current arrangement for the payment of the overdue Rates and Charges; and
- there is a Court order requiring the payment or part-payment of the overdue Rates and Charges; and
- there has been little or no attempt to pay the outstanding rates during the period of 3 years.

This action may be taken in the following circumstances:

- history of contact with the ratepayer
- after giving regard to the ratepayer's debt repayment record
- ability to repay the debt
- their age
- state of health
- family situation.

Before any land is sold or transferred, it must be approved by the Chief Executive Officer and brought to the attention of Council.

## 12. CONFIDENTIALITY

Applications for consideration of financial hardship will be treated as strictly confidential in accordance with Council's Privacy Directive. An applicant is required to provide their personal information to Council on the approved "**Rates and Charges Financial Hardship Application Form**" and having met with a Financial Counsellor who will confirm to Council the ratepayer's current financial situation in relation to the hardship application. The Application is valid for 12 months and should be re-applied for should the approved hardship extend beyond the 12 months.

Strathbogie Shire Council and its Officers will treat all information provided by ratepayers and others under this Policy with the utmost of confidentiality as per the *Privacy & Data Protection Act 2014 (Vic)* which protects the personal information of individuals who provide their information to Victorian government departments including local councils.

## 13. DEFINITIONS

Term	Meaning
The Act	means <i>The Local Government Act 1989 and Local Government Act 2020</i>
Council	means the Strathbogie Shire Council
Deferral of payment	means suspension in whole or in part of the payment for the period of time and subject to those conditions as determined by Council. The full amount will still be eventually recovered, and the outstanding amount will still incur interest.
Letter to mortgagee	means (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);
Rate rebate	means a deduction from the sum to be paid. This deduction can be either a discount or a partial refund.
Rent Demand	on the tenant of a rented property

Summons (Complaint)	means demand for payment issued through the Magistrates Court incurring legal costs.
Summons for Oral Examination	Means a ratepayer is interviewed by the Clerk of Courts regarding their financial situation and intentions in relation to repaying the debt
Waiver	means permanent exemption from the liability to pay the whole or part of any interest charge. Rates and charges will not be subject to a waiver except by council resolution. Council Officers will determine on applications for waiver of interest.
Warrant to seize goods	Means some goods are not able to be seized like necessary household goods, tools of trade and low valued motor cars.

#### **14. RELATED POLICIES AND LEGISLATION**

The following Council, State, regional and national plans and policies are relevant to this policy under each subtitle.

##### *Council's Authorisations and Financial Delegations*

*Local Government Act 1989*

*Local Government Act 2020*

*Penalty Interest Rate Act 1983*

*Fire Services Property Levy Act 2012*

*Civil Procedures Act 2010*

*Privacy and Data Protection Act 2014 (Vic)*

*Charter of Human Rights and Responsibilities Act 2006*

*Equal Opportunity Act 2010*

#### **15. POLICY REVIEW**

Council may review this policy at any time and at least two years from the date of adoption.

Minor amendments to the policy may be authorised by the CEO at any time where such changes do not alter the substance of the policy (e.g. a change to the name of a related document, or a change in legislation).

Should there be a change due to State or Federal government requirements, then this authorised by the CEO or Council as required.

#### **16. CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 AND THE EQUAL OPPORTUNITY ACT 2010**

The Council acknowledges the legal responsibility to comply with the *Charter of Human Rights and Responsibilities Act 2006* and the *Equal Opportunity Act 2010*. The *Charter of Human Rights and Responsibilities Act 2006* is designed to protect the fundamental rights and freedoms of citizens. The Charter gives legal protection to 20 fundamental human rights under four key values that include freedom, respect, equality and dignity.

## **17.   HARDSHIP APPLICATION GUIDE**

### **Application**

Application must be made on the form provided by the Council for that purpose. Additional and supporting information can be attached to the application. If the person completing the application form is having any difficulty in completing the form, or are unsure of any matter, they should contact Council and the appropriate Officer will provide assistance.

### **Confidentiality**

All applications will be treated with the utmost respect and confidentiality. Applications are not a public document and the information provided will only be used in respect to the application and for no other purpose.

### **Process**

The application will be considered in conjunction with this Council Policy relating to applications of this type. A copy of the Policy is available for the applicant. Applicants are encouraged to meet with a Financial Counsellor for an interview prior to approval of any arrangements.

### **Decision**

Applicants will be advised in writing of the decision in respect to their application within one month of lodging it.

### **General**

If after lodging an application the applicant wishes to discuss any aspect or perhaps add further information, they can contact the Council office and make appropriate arrangements via the Rates Department.

### **Council Consideration**

It is possible that a Council Officer may contact the applicant to discuss the application and perhaps clarify a matter. This is a normal process and all responses will be dealt with confidentially and with respect.

### **Completion Of Form**

To assist Council in determining the application, all questions must be answered. Blank responses will not be adequate. There will be one form completed for each Property Owner.



## RATES AND CHARGES FINANCIAL HARDSHIP APPLICATION FORM

### APPLICATION FOR:

- ☐ Statutory declaration for persons suffering financial hardship
- ☐ Deferment of payment of rates
- ☐ Waiver of interest on rates
- ☐ Special Payment Arrangement

(One owner per form)

(Refer sections 156, 163, 170 and 171 *Local Government Act 1989*)

Rateable Property Address: .....

Applicant .....

(Name in Full)

Of .....

(Address)

Occupation .....

Phone Numbers:      Mobile: .....

After Hours: .....

Business Hours: .....

Email Address: .....

I, ..... DO SOLEMNLY AND SINCERELY DECLARE THAT:

(Applicants Full Name)

1 I am the owner and occupier of the premises known as:

.....

(Property Address)

2 The following are the particulars of all persons residing at the said premises:

Name	Relationship to Owner	Occupation

3 I receive the following amounts per week for:

a. Rental of rooms occupied: .....

b. Board and/or lodgings: .....

c. Rental of land: .....

4 I own the following assets:

a. Land and buildings: .....

b. Cash and/or funds held in any financial institution (including shares, unit in a Trust, etc):

.....

c. Vehicles, other capital equipment, etc:

.....

5 My total income *per annum* from all sources is as follows:

a. Salaries / Wages: .....

b. Property: .....

Bank Interest: .....

c. Other Interest: .....

d. Pension (state type and amount): .....

e. Other Centrelink Payments: .....

f. From any other source: .....

g. From State and/or Federal  
Government Assistance Schemes: .....

**TOTAL INCOME PER ANNUM:** .....

6 I am responsible for the following dependants:

Name	Relationship to Owner	Age	Occupation



7 The following financial obligations are associated with this property:

Mortgage – total amount outstanding: .....

Institution where Mortgage is held: .....

Monthly Payments: .....

Other regular payments (please provide details) e.g. Power, Water, etc.

Item	Regular Payment	Total Debt
<i>e.g. Power</i>	<i>e.g. \$50/fortnight</i>	<i>e.g. \$1000</i>

8 I have owned the property since: .....

9 I understand that this application applies to the Rates on this property only and does not apply to Service Charges.

**AND I MAKE THIS SOLEMN DECLARATION**, conscientiously believing the same to be true by virtue of the provision of an Act of the Parliament of Victoria rendering persons making a false declaration liable for wilful and corrupt perjury.

DECLARED AT: .....in the state of VICTORIA

THIS .....DAY OF .....Two thousand and twenty.....

**BEFORE ME** .....(**Justice of the Peace**)

NOTE: Council policy requires that you meet with a Financial Counsellor\* (see below) who can advise Council on your current financial position. Please advise below, the contact details for the Counsellor used:

Company: .....

Contact Name: .....

Contact Phone: .....

*Application is hereby made for consideration by Council for concession in respect to the above property in which I reside.*

**SIGNED:** .....

**DATE:** .....

- \* Primary Care Connect – Shepparton – 03 5823 3200
- \* National Debt Helpline – 1800 007 007 (9:30am to 4:30pm Monday to Friday)

Your application will be treated with the utmost respect and confidentiality.

Your application is not a public document and the information is only used in respect to this application and for no other purpose.

- In conjunction with this application form, you should obtain and read a copy of the Strathbogie Shire Council's Rates and Charges Collection and Hardship CEO Directive.
- Your application will be considered in conjunction with Council's Directive relating to applications of this type.
- Should your application be approved, no debt recovery action will be undertaken during the period of the approved application (12 months).
- You will be required to make an appointment with a financial counsellor\* and advise Council of that meeting. Once the financial Counsellor has discussed your situation with you, the Counsellor is required to contact the Revenue Department on 1800 065 993 to confirm your current financial situation in relation to this hardship application.
- You will be advised in writing by Council of the decision in respect to your application within one month of lodging it.
- Your application is for a period of 12 months from the time of approval. You will be required to re-apply if you require consideration beyond that period.
- Rates and charges are the first charge on a property and are always recoverable before any other charges on the property are paid. Should your property be sold at any time during the agreement, the full payment of outstanding rates will apply and any agreement entered into for this property will be voided.

★ *Primary Care Connect – Shepparton – 03 5823 3200*

★ *National Debt Helpline – 1800 007 007 (9:30am to 4:30pm Monday to Friday)*

<i>Office Use Only:</i>	
<i>Date Received:</i>	...../...../.....
<i>Property Assessment No:</i>	.....
<i>General Rate for period:</i>	\$.....
<i>Other Charges:</i>	\$.....
<i>Interest to Date:</i>	\$.....
<i>Total Amount Due:</i>	\$.....