

Rate Payment & Financial Hardship Policy

Version: 1.0

Date updated: 17 October 2017

Responsible Department: Finance

1. Purpose

In accordance with the *Local Government Act 1989*, Council levies Rates and Charges on rateable land to provide for services to the community. The City of Casey recognises there are cases for genuine financial hardship requiring respect and compassion in particular circumstances.

This policy sets out the processes for the Council to collect Rates on Rated Property, in particular where property owners are subject to some sort of financial difficulty. This policy updates Council's current debt collection procedure for Rates and is to be applied in a manner which both preserves Council's revenue requirements, whilst taking into consideration the financial hardship of some property owners. It sets out the process to be adopted where a property owner asserts they are unable to make payment of rates.

2. Definitions

Council	means Casey City Council, being a body corporate constituted as a municipal Council under the Local Government Act 1989
Councilors	means the individuals holding the office of a member of Casey City Council
Council officer	means the Chief Executive Officer and staff of Council appointed by the Chief Executive Officer.
Deferment	is a postponement of payment, in whole or in part, and can be for a specified period and subject to any conditions determined by Council. Deferred rates are a charge on the property and will continue to accrue interest until the account is paid in full. A deferment of Rates, is for a maximum of three years and cannot be applied for more than once.

Council policy documents change from time to time and it is recommended that you consult the electronic reference copy at www.casey.vic.gov.au/policiesstrategies to ensure that you have the current version. Alternatively, you may contact Customer Service on 9705 5200.

Genuine Financial Hardship

is a situation where a property owner is reasonably unable, because of illness, unemployment or other reasonable cause, to discharge their financial obligations.

Financial hardship involves an inability of the property owner to meet their 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 breakdown;
- Illness, including physical incapacity, hospitalization, 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.

Property Owner

is the registered proprietor of Rated property within the municipality, who is legally responsible to pay Rates under section 156 of the *Local Government Act 1989* (Vic).

Ratepayer

is the occupier of any rateable property who is liable to pay rates. This maybe the property owner or a tenant who under the lease agreement is liable to pay rates.

Waiver

is the relinquishment or removal of the liability to pay and may include the whole or part of any interest or where applicable part of rates and charges.

3. Purpose/Objective

The purpose of this Policy is to establish a framework for Council to manage payments and communicate with property owners who have unpaid Rates accounts or who are identified as experiencing financial hardship. For those property owners not experiencing financial hardship, this policy provides the framework for the collection of rates and charges.

When assessing any application about financial hardship, due consideration must be given to Council's overall revenue requirements and services provided. While all property owners receive the direct benefit provided through the payment of rates and charges, it is important that Council has a mechanism to consider the needs of property owners who are suffering genuine financial hardship.

Sections 170 and 171 of the *Local Government Act 1989* sets out the circumstances in which a Council may consider an application for deferment or waiver of rates, charges and penalty Interest.

This Policy must be read in conjunction with these sections, and does not take precedence over them.

4. Scope

This policy applies to all property owners and ratepayers of the City of Casey. In particular, the policy applies to those property owners who have been identified, either by themselves, Council Officers or by an independent accredited financial counsellor, as having the intention to pay their rates, but who does not have the financial capacity to make the required payments. 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* (the Act), to recover overdue amounts. These recovery methods include legal action and, in extreme circumstances, the sale of property.

This policy applies to revenue included on the rate notice (rates, waste charges, fire services property levy, legal costs, interest and other relevant charges).

Assistance can only be granted to individuals experiencing financial hardship for payment of rates on their principal place of residence or those liable to pay rates and charges on Commercial and Industrial properties. Applications for financial hardship consideration on residential investment properties will not be considered.

Council frequently enters into payment arrangements with property owners. This form of assistance is not categorised as "financial hardship assistance". In these circumstances Council will monitor progress towards clearing the debt within a specified time, but if the debt is not cleared, further assistance may be considered.

5. Context

This policy is to detail collection procedures and assist property owners and ratepayers who are experiencing financial hardship, to manage their payment of rates in a manner acceptable to both the property owner and the Council. The policy provides a greater understanding of financial hardship, which effectively manages Councils financial hardship for property owners and will result in improved customer satisfaction and a reduction in debt collection expenses. For this policy to be successful it requires the co-operation of both parties to openly and honestly communicate with each other.

6. Policy

6.1. Rates and Charges Collection

Arrangements for the payment of rates and charges are detailed in s167 of the Act.

The current **annual** due date is: 15 February

The current **instalment** due dates are:

First Instalment 30 September

Second Instalment 30 November

Third Instalment 28 February

Fourth Instalment 31 May

The current **Direct Debit** due dates are: 28th of each month (over 9 months)

Direct debit payments are evenly calculated over nine months and due on 28th of each month commencing 28th of September to 28th of May inclusive. Payments are deducted from a nominated bank account.

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

In most circumstances interest will be charged on all overdue amounts in accordance with s172 of the Act at the rate set under the *Penalty Interest Rates Act 1983*.

6.2. Calculating Interest

Late Payments are subject to Interest and interest will continue to accrue on overdue amounts.

- Where Rates are paid by instalments and an instalment amount is not paid by the due date, Interest will accrue from the due date of the missed instalment to the date the payment is made in full.
- If the first instalment was not paid by the due date, the Property Owner will be deemed to be paying the full sum due by 15 February and Interest will be levied and payable, as if the Property Owner was paying by instalments and has missed the relevant instalment or instalments, and continues until the Rates are paid in full. Section 172 of the Local Government Act stipulates how interest is to be levied.

6.3. Payment Arrangements

A payment arrangement can be made at any time but are subject to the following conditions:

- Accounts on Arrangement will continue to accrue interest on overdue amounts.

- Where rate payments are in arrears, any default from the payment arrangement may result in legal action to recover the debt without further notice

Council will be flexible regarding the type of arrangement entered into, to best suit the property owner's circumstance.

If the property owner is unable to make a regular repayment arrangement their application should be assessed under the financial hardship provisions in this policy.

6.4. Collection arrangements where no financial hardship has been identified

Where the payment of rates remains outstanding after the communicated due dates, or where there has been a default in an agreed payment arrangement, the following debt recovery process will occur:

Reminder Notice

Following the second, third and fourth instalment payment dates, a reminder notice will be issued to property owners who have previously elected to pay by instalments requesting payment within fourteen days.

Final Notice

If no payment or action has been taken by the ratepayer after a reminder notice has been sent, and the amount of rates outstanding is greater than \$10 a Final Notice will be issued by Council.

Final notice reminder

If no payment or action has been taken by the ratepayer after the Final Notice has been issued a Final Notice reminder will be sent where the amount of rates outstanding is greater than \$10.

Solicitors Letter of Demand

If the ratepayer has failed to respond to the Final Notice the property owner will be issued with a Letter of Demand by Council's debt collection agency, requiring payment within fourteen days.

Solicitors Letter of Demand Reminder

Property owners, who fail to respond to the Letter of Demand issued by Council's debt collection agency, will be sent a SMS or will be hand delivered a letter requiring payment within fourteen (14) days or to make an arrangement to pay.

Legal Action

Property owners who fail to respond to the solicitor's Letter of Demand or Letter of Demand Reminder will be referred for the commencement of legal proceedings by Council's debt collection agency. A summons (complaint) will be issued to those property owners who have an amount outstanding of \$1000 or more as the costs of legal

action (as set by the Magistrate's Court) are significant and are charged to the property owners. This amount will be reviewed annually considering the applicable court and legal fees that would apply, as these change periodically.

Once a summons/complaint is prepared and lodged with the Court for issue, the associated legal costs become chargeable to the property owner. Within twenty-one (21) days from the date of service of a summons/complaint the property owner is obligated to:

- Pay the claim in full plus costs; or
- Request a suitable 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 twenty-one (21) days, the property owner has failed to carry out any of the above, an application will be made to the Court for an Order against the property owner for 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 property owner:

- Summons of Oral Examination (property owner 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 property owner failed to respond to an order being obtained).
- Issue a rent demand. If the property is being leased, either for residential or commercial purposes, Council can demand that the rental payments be used to repay the outstanding rates or charges.
- Warrant seizing goods (some goods are not able to be seized like necessary household goods, tools of trade and low valued motor vehicles).
- Garnishee of wages.

The Companies Code provides Council with the authority to commence liquidation proceedings for commercial premises, where the outstanding rates/charges exceed \$2000 and the preceding steps have been unsuccessful.

Possible Sale of Property

- A.** Should the debt remain outstanding Council will receive a report recommending the possible sale of the property if all the following criteria are met:
 - I. The rates or charges have been outstanding for more than three (3) years; and
 - II. The Mortgagors/Mortgagees have been advised; and
 - III. A magistrate's Court Oder has not resulted in payment.

- B.** At the request of the property owner or their representative, Council may, at its discretion, provide a letter to the Australian Prudential Regulation Authority stating that the property will be sold to recover unpaid rates or charges if the criteria in section **A** above have not been met. Payment in full is required within thirty (30) days of the date of the letter issued to avoid such a sale.

6.5. Identification of genuine financial hardship

The identification of genuine financial hardship can be determined by:

- Assessment by Council officers.
- Self-assessment by the customer.
- External assessment by, for example, an independent accredited financial councillor (preferred).

Where an assessment takes place to determine a customer's eligibility to relief under this policy, judgement is required by Council when deeming whether a property owner is experiencing genuine financial hardship rather than simply seeking to defer payment.

If Council requires tangible evidence of hardship, they may request:

- Documentation providing evidence of the property owner having consulted with, and/or being accompanied by a recognised financial counsellor or a booking to see a financial counsellor, or
- Documentation such as a statutory declaration from a person familiar with the property owner's circumstances (family doctor, bank officer etc).

Council may also require supporting documentation where:

- It appears that the financial agreement will need to be long term,
- The property owner has had payment issues with Council in the past,
- The amount outstanding or remaining overdue is considered large or significant, or
- Financial Hardship has been utilised by the property owner in the past.

The Financial & Consumer Rights Council of Victoria (FCRC) is the peak body for Financial Counsellors in Victoria. The FCRC can help affected persons find a financial counsellor – please visit www.fcrc.org.au for more information.

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. Visit www.ndh.org.au or call

1800 007 007 for more information.

6.6. Application for financial hardship

Customers may apply for the following, pursuant to s170 and s171A of the Act:

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

Customers are required to submit an “Application for Assistance Due to Financial Hardship” for their eligibility to be assessed. *This form is available by download from Council’s website or in person at the Civic Centre.*

6.7. Assessment of genuine financial hardship

Assessment of genuine financial hardship will be objectively based on the information provided by the customer on the form “Application for Assistance Due to Financial Hardship”.

Determination on applications to defer rates and charges or for waiver or write-off of interest, legal charges and the waiver of rates and charges will be subject to approval by:

- Chief Financial Officer of amounts less than \$2,500.
- Director Corporate Services of amounts of \$2,500 or greater

Determination on applications for waiver or write-off of “one off” interest and legal charges due to administrative error will be subject to approval by:

- Team Leader Rates & Valuations

6.8. Deferment of Rates

A deferral of rates and charges may be considered by Council where the applicant can provide supporting documentation of the following

- A. Is in receipt of a Commonwealth Centrelink aged pension payment, a veteran’s pension as a war widow, because they are totally or permanently impaired, or they are subject to an extreme disability adjustment evidenced by:
- a Pensioner Concession card; or
 - a Veterans Affairs Gold card;

Or

- B. They can provide evidence of genuine financial hardship as certified by an assessment carried out by an independent financial counsellor;

A deferral of rates and charges is a postponement of payment in whole or in part and can be for a specified period and subject to any conditions determined by Council. In all applications for rate deferrals, the Property Owners who are the subject of a Deferral under this paragraph should be urged to continue to make such contributions to Rates payments as they are able.

Rate deferral agreements will be for a maximum of three (3) years, with the applicant having a maximum of three (3) further financial years in which to fully repay all rates deferred. Rates that accrue during the interim period must also be paid by the extended payment date. Deferred rates are a charge on the property and will continue to accrue interest until the account is paid in full.

Where the Council Officer determines that this policy may apply, the Applicant must complete the Application for assistance due to Financial Hardship.

If on receipt of the Deferral Application Form, the CFO determines that a failure to defer would:

- cause serious Financial Hardship to the Property Owner; and
- it is appropriate and equitable in the circumstances,
- the CFO will then arrange to:
 - enter the appropriate Deferral on to Council's Information System;
 - notify the Property Owner in writing of agreement.

The Council Officer will ensure that its contracted Debt Collection Agency is notified that action is deferred on a property the subject of this paragraph.

Those that have been assessed for a successful deferral are ineligible to reapply in the future for further deferrals.

6.9. Waiving Interest

A Waiver of Interest on a Rated Property will only be considered by Council in extenuating circumstances where:

- **Waiver for Administrative Reason/Error** – property owners may have the penalty interest waived in the event of an administrative issue, error or omissions which cause or significantly contributed to the failure to pay rates in a timely manner.
- **Waiver under “one off” interest waiver application** - property owners may apply for Council to waive interest that has been charged in the current financial year where the debt has been paid in full on a “one off” basis where a waiver has not previously been granted.
- **Waiver on Compassionate Grounds** – property owners may have penalty interest and/or other charges waived where they have demonstrated compassionate grounds for a payment being late.

Non-receipt of a rate notice, travelling overseas, forgetfulness, failure to contact Council prior to the due date to advise of financial difficulty, a failure to advise of a change of residential or mailing address, or previous Payment Arrangements not being maintained are not deemed to be extenuating circumstances.

6.10. Waiving Rates

Consideration of a waiver under this section will only be considered after an initial deferment of rates has been granted. Section 171 of the Local Government Act 1989 (Vic) allows Council to waive the whole or part of any Rates or Interest in relation to an eligible recipient or any other class of persons as determined by Council.

A person who is an eligible recipient who is suffering Genuine Financial Hardship or would suffer Genuine Financial Hardship if that person paid the full amount of the Rates for which he or she is liable, may apply to Council for a waiver of the whole or part of any Rates.

Except for the most exceptional circumstances, Council will not waive any Rates but rather will encourage the person to enter into a Payment Arrangement under Section 3 of this Policy, or where the person meets the criteria for Deferment of Rates under section 8, to defer the Rates.

Council will waive Interest as per section 9 of this policy.

Where it is thought that exceptional circumstances exist such that waiver of the Rates is appropriate, the Applicant must complete the Application for assistance due to Financial Hardship. That waiver must be authorised by the CFO in accordance with his or her delegation.

The maximum amount of any waiver in one financial year will be limited to \$500, unless Council resolves that exceptional circumstances warrant an exception to this policy framework.

Any waiver is a one off waiver in response to circumstances at the time, those that have been assessed for a successful waiver are ineligible to reapply in the future for further waivers.

7. Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name of a Federal or State Government department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council.

8. Review

The next biennial review of this document is scheduled for completion by 30 June 2021.

9. Breaches

Complaints or allegations concerning the application of this policy will be investigated in accordance with Council's Complaint Handling Framework.