

# Hardship Policy

MSC15E

**Adopted by Council:**

Date: 05/04/2022

Minute No. 279

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## 1. Purpose

Payment of rates and charges is an important obligation of all property owners. Revenue collected from rates and charges is used to help provide a wide range of services and facilities to everyone that lives, works and visits the Muswellbrook Shire Council area. Without this revenue Council would not be able to function or meet the needs of the local community

## 2. Policy Objective

- 2.1 Council recognises there are cases of genuine financial hardship requiring respect and compassion in special circumstances. This policy establishes guidelines for the assessment of hardship or payment assistance applications applying the principles of social justice, fairness, integrity, appropriate confidentiality, and compliance with relevant statutory requirements. It applies to all applications for waiving, deferment and alternative payment arrangements, or writing off of rates, fees, annual charges and interest accrued on such debts.
- 2.2 This policy provides a framework for responding to applications from owners/ratepayers and customers experiencing genuine hardship with the payment of their rates, annual charges and fees in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2005.
- 2.3 Privacy will be maintained in accordance with the NSW Privacy and Personal Information Protection Act 1998.

## 3. Definitions

Council means the Muswellbrook Shire Council.

The Act means the Local Government Act 1993 (as amended).

The Regulation means the Local Government (General) Regulation 2005 (as amended).

The VOL Act means the Valuation of Land Act 1916 (as amended).

Financial Hardship means the inability of a ratepayer to meet payment of rates and/or charges as they fall due, where illness, injury, unemployment or another reasonable cause is the reason for hardship/special variation.

## 4. Policy Statement

### 4.1 Hardship Assistance to Ratepayers and Customers

- 4.1.1 A ratepayer may be eligible for consideration for hardship assistance in the payment of overdue rates, annual charges, interest, and fees, where:
  - a) the person is unable to pay rates, annual charges, interest, or fees when due and payable for reasons beyond the person's control; or
  - b) payment when due would cause the person hardship.
- 4.1.2 The Act provides for the following assistance to ratepayers and customers who may experience hardship in some circumstances in paying rates, annual charges or fees:
  - a) Periodical payment arrangements for overdue rates and charges [Section 564];
  - b) Writing off or reducing interest accrued on rates or charges [Section 564(2) & 567];
  - c) Waiving, reducing or deferring the payment of the increase in the amount of rates payable because of substantial hardship resulting from general revaluation of land in the Local Government Area [Section 601];
  - d) Waiving, or reducing rates, charges or interest of eligible pensioners. [Section 575, 582];
  - e) Waiving or reducing Council fees when the inability to pay is due to hardship [Section 610E].
- 4.1.3 Applications for assistance will be considered in accordance with the following principles:

- a) An assessment panel consisting of the Chief Financial Officer, Community Services Manager and Rates Clerk will form to assess cases of financial hardship;
- b) Rates or annual charges will not be reduced, alternative available approaches to dealing with cases of financial hardship will be considered;
- c) A arrangement of periodical payments outside due dates may be considered in cases of hardship or extenuating circumstances.

4.1.4 Applications for hardship must be made in writing, addressed to the Chief Financial Officer.

- a) The applicant must be the person whom is liable for the rates / annual charges / fees and / or interest on the property.
- b) The property to which the hardship application applies must be categorised as residential or farmland (excluding " Affected by Mining" and " Offset" farmland sub-categories) for rating purposes.
- c) The property to which the hardship application applies must be the principal place of residence of the applicant/s.
- d) The property for which the hardship applies must not be a rental property or otherwise income-producing.
- e) The property for which the hardship applies must not be categorised as Business or Mining for rating purposes.
- f) No ratepayer, including pensioners, will be permitted to accrue outstanding rates, fees, charges or interest to their estate.
- g) The rates payable must be more than 5% of the gross household income.

4.1.5 The application for hardship must be accompanied with the following supporting documentation, at a minimum:

- a) Statement of reasons why the person was unable to pay the rates and charges when they became due and payable; and
- b) Letter from a medical professional (if applicable) confirming medical conditions causing hardship; and
- c) Letter from a recognised financial counsellor or financial planner confirming financial hardship and containing, at a minimum, the following:
  - o Copy of recent bank statements (previous 3 months) for all accounts;
  - o Details of assets, income and expenditure.

4.1.6 Council may require the provision of any other documents and information which, in its opinion, it requires to make an assessment of the application.

4.1.7 Council may request the applicant attend an interview to assist Council in the understanding of the issues causing hardship.

4.1.8 Council may waive the application documents if ratepayers enter a maximum 12-month arrangement.

4.1.9 Support services and financial counsellors can be sought from these sources:

- a) Financial Advice, including financial counsellor search function - [www.moneysmart.gov.au/managing-your-money-managing-debts](http://www.moneysmart.gov.au/managing-your-money-managing-debts)
- b) Legal Aid service (Legal Advisers) – [www.legalaid.nsw.gov.au/get-legal-help/find-a-service](http://www.legalaid.nsw.gov.au/get-legal-help/find-a-service)
- c) Community Legal Centres in different local government areas – [www.clcnsw.org.au/find\\_legal\\_help](http://www.clcnsw.org.au/find_legal_help)
- d) Government funded Financial Rights Legal Centre who can be contacted at either 1800 007 007 or at [www.financialrights.org.au](http://www.financialrights.org.au)

## **4.2 Hardship Assistance by Periodical Payment Arrangements**

- 4.2.1 Council may enter into a formal agreement with a ratepayer eligible for alternative periodical payment arrangements for due and payable rates and charges. Council or the ratepayer may initiate a proposal for a periodical payment agreement. In accordance with section 568 of the Act, payments will be applied towards the payment of rates and charges in the order in which they become due.
- 4.2.2 The following guidelines should be met in determining eligibility:
- a) Payments must be made on a weekly, fortnightly or monthly basis.
  - b) Any mutually acceptable repayment schedules have a maximum 12 month term.
  - c) All repayment schedules are to be reviewed at the end of each 3 month period and upon the raising of further rates and charges.
  - d) Any future rates and charges and water usage raised against a property are due and payable on the due dates.
  - e) Interest charges may be suspended during the term of the mutually acceptable repayment agreement, subject to the ratepayer complying promptly with its obligations thereunder.
  - f) Where a scheduled default occurs and subject to cl 4.2.2.e, the levying of interest charges is to be reactivated from the last payment made in accordance with the repayment schedule.
  - g) Where an applicant does not complete an application or does not produce sufficient information (in Council's opinion) to enable a determination, the application shall be refused.
  - h) Arranged payments must be of an amount so that all amounts owing are paid in full by a mutually satisfactory timeframe as agreed by Council and the ratepayer, with the aim being that all amounts are paid in full by 30 June of the financial year in which the payment arrangement was executed.
  - i) Extenuating circumstances can be taken into consideration by providing additional supporting documentation to those documents required in section 4.1.5 and by referral to the Chief Financial Officer.
- 4.2.3 Council may require the provision of any documents and information which, in its opinion, it requires to enter into a periodical payment arrangement. Refer to sections 4.1.5-4.1.7 as a guide.

## **4.3 Hardship Assistance by Writing Off Accrued Interest and Costs**

- 4.3.1 Council applies interest to overdue rates in accordance with section 566 of the Act. However, Council may write off accrued interest and costs on rates or charges payable by a person under Section 567 of the Act and the Regulation where:
- a) The person was unable to pay the rates or charges when they become due for reasons beyond the person's control; or
  - b) The person is unable to pay accrued interest for reasons beyond the person's control; or
  - c) Payment of the accrued interest would cause the person hardship.
- 4.3.2 Council may write off interest and costs in accordance with section 567(3) of the Act under the following circumstances:
- a) The ratepayer is experiencing genuine hardship. In such cases, Council will request the completion of a hardship application (see section 4.1);
  - b) The ratepayer is a "first-time" defaulter, has previously had a good payment record and there are mitigating circumstances;
  - c) Prolonged or serious illness has prevented the ratepayer meeting their financial obligations to Council;
  - d) The ratepayer has complied with all criteria with respect to a section 564 periodic payment agreement;
  - e) Council is satisfied that the circumstances giving rise to the default are temporary;
  - f) Alternatives to recover the entire debt are unavailable.

#### **4.4 Hardship Assistance due to Certain Valuation Changes**

- 4.4.1 Under section 601 of the Act, any ratepayer who incurs a rate increase following a new valuation of land values may apply to Council for rate relief in the first year the valuation is used for rating purposes, if the new rate payable causes the ratepayer to suffer substantial hardship (section 601(1)).
- 4.4.2 Valuations are determined independently by the NSW Valuer-General. Council will encourage aggrieved ratepayers to make an appropriate application under the objection or appeal provisions of the VOL Act.
- 4.4.3 In determining an application made under s601(1), Council requires detailed evidence must be provided by the ratepayer to demonstrate that the rates made and levied on a new valuation cause the ratepayer to suffer “substantial hardship”.
- 4.4.4 That evidence includes, but is not limited to, the documents and information specified in section 4.1 in respect of a hardship application.
- 4.4.5 Council considers that the use of the term “substantial hardship” in s601(1) sets a high bar.
- 4.4.6 In addition, it is considered that Council has maximised its scope under the Act to adopt a rating structure that cushions the impact of any change in valuations on rates.

#### **4.5 Hardship Assistance in relation to Council Fees**

- 4.5.1 Any application for hardship assistance in relation to Council fees or charges other than annual charges by waiving or reducing fees under section 610(E) of the Act will be assessed in accordance with the same criteria used to assess hardship assistance in respect of rates and annual charges.

### **5. General**

- 5.1 Financial hardship cases will remain strictly confidential. Personal information collected as a consequence of this policy will only be used for the purpose of assessing eligibility under the policy and will not be used for any other purpose or disclosed to any other person unless required by law to do so or authorised to do so by the person to whom the personal information relates.
- 5.2 All hardship applications shall be determined under Council delegations.
- 5.3 All hardship applicants shall be advised in writing of Council's decision within 30 days of receipt of the application.

## Authorisation Details

<b>Authorised by:</b>	Council
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## Details History

<b>Version No.</b>	<b>Date changed</b>	<b>Modified by</b>	<b>Amendments made</b>
1	16/02/16	Council minute no 427	
2	05/04/2022	Council minute no 279	Major Rewrite. Adopted 05/04/22 minute number 279. Public Exhibition from 6/04/22 for 28 days, no submissions received therefore adopted by Council on 05/04/22.