

Special Charge Scheme Policy

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1. PURPOSE

The purpose of this policy is to outline an equitable and consistent approach to the implementation and administration of special charge schemes under sections 163-166 of the *Local Government Act 1989* (the Act).

The policy will operate within the legislative framework and outlines the procedure for implementing special charge schemes.

2. OBJECTIVES

Section 163 of the Act is intended to enable a Council to recover the partial cost of capital works and economic development projects from property owners where those works will be of a special benefit to them. These works are primarily, but not limited to, road, drainage, kerb & channelling, footpath construction projects and arrangements for providing services like promotion, marketing or economic development (eg. for commercial businesses) that are either requested by the abutting property owners or implemented by Council as part of its capital works program. Once the works have been constructed, it will become Council's responsibility to maintain the asset to appropriate standards.

This policy will guide Council and its residents to develop appropriate local infrastructure to suit the community's specific and potential needs. Some key outcomes of the adopted process will be to:

- Minimise community conflict.
- Have open and transparent processes.
- Provide a fair and equitable basis for apportioning costs.
- Develop infrastructure in accordance with Mitchell Shire Council's business goals, objectives and policies.

Works constructed through the implementation of a special charge scheme will benefit the community by providing improved accessibility and/or service. Council will also accumulate and manage safer and more permanent infrastructure.

3. SCOPE

This policy relates to the development of physical infrastructure such as, but not limited to, roads, kerb and channel, footpaths and drainage throughout the Shire where it is considered that the construction of such works will be of special benefit to those who would be required to pay a Special Charge, in accordance with section 163 of the *Local Government Act 1989*.

4. DEFINITIONS

A Special Charge Scheme or 'Scheme' is defined in accordance with the Special Rate and Special Charge provisions of section 163 in the *Local Government Act, 1989* as follows:

(1) A Council may declare a special rate, a special charge or a combination of both only for the purposes of:

- (a) Defraying any expenses; or*
- (b) Repaying (with interest) any advance made to or debt incurred or loan raised by the Council*

In relation to the performance of a function or the exercise of a power of the Council, if the Council considers that the performance of the function or the exercise of the power is or will be of special benefit to the persons required to pay the special rate or special charge.

5. CONSULTATION

Council will consult in an open and honest manner with all parties likely to have an interest in any project. The extent of the consultation will depend on the size and/or likely impact of the proposed works generally in accordance with the following:

- For larger projects, an Advisory Panel representing a broad cross section of interests (maximum of 5 contributor representatives with a Ward Councillor as chairperson) may be appointed at a public meeting to work with and advise the Project Manager for the duration of the Scheme.
- For other projects, schemes that have demonstrated community support and/or limited complexity, consultation may be undertaken on a one on one basis directly with property owners as required.

At the completion of each project, feedback may be sought to assist Council with the improvement of future schemes.

6. STATUTORY PROCEDURE

The requirements of the sections 162-166 of the *Local Government Act 1989* shall be adhered to.

7. COUNCIL BUDGET

Council will make provision within its annual budget for projects which are proposed to be constructed by way of a special charge scheme.

8. COST APPORTIONMENT

Ministerial Guidelines have been prepared to assist and guide a Council in relation to complying with the provisions of the Act and specifically address the calculation of the maximum total amount that may be levied as a special rate or charge. The calculation of the actual apportionment of costs for each property is a separate process from the calculation of the maximum levy.

Council acknowledges that in most cases it is required to contribute toward a special charge scheme. Council will consider its own contributions towards a scheme where, as example, the following instances apply:

- The cost of providing works to a standard higher than that normally required for that particular asset, e.g. wider street, indented parking etc.
- The proportion attributed to community benefit, e.g. impact of through traffic, upstream flows etc.
- The proportion attributed to any Council land that abuts the works, e.g. adjacent public open spaces, road reserve, community facility etc.
- In accordance with section 163(2BA)(b) of the *Local Government Act 1989* where the final costs exceeds the Council estimated cost because of design and market influences rather than changes requested by residents, Council will meet the additional costs over 10% beyond the original estimated cost.

The calculation of the actual apportionment of costs for each property is a separate process from the calculation of the maximum total levy. As each scheme is developed, an equitable and appropriate apportionment will be developed. It should be recognised that each proposal may have its own unique set of circumstances that have to be taken into account when calculating an apportionment.

9. RESPONSIBILITY

Engineering Services Department

10. REVIEW

This policy may be varied by Council at any time and/or shall be reviewed by 30 June 2018.

11. RELATED DOCUMENTS

- *Local Government Act 1989*
- Ministerial Guidelines (Calculating Maximum Total Levy – section 162(2C) of *Local Government Act 1989*) (Attachment 1)
- Mitchell Shire Council Procurement Policy, 2013

12. ATTACHMENTS

1. Special Charge Scheme Procedure
2. Special Charge Scheme Flowchart
3. Special Charge Scheme Checklist
4. Special Charge Scheme Process Explanation

ATTACHMENT 1 - SPECIAL CHARGE SCHEME PROCEDURE

The purpose of this procedure is to set out the process to be followed for works constructed by way of a special charge scheme to ensure that they are completed in accordance with the *Local Government Act 1989*, Council's Special Charge Scheme Policy, and within appropriate timeframes and budget.

PRELIMINARIES

1. A project may be identified by either Council, Council Officers, members of the public, or community groups.
2. Support for projects will be ascertained through the conduct of a survey of the property owners which will be affected by any proposal. If a proposed project is not supported by a majority of affected property owners the matter will not proceed any further. A majority is considered to be 65% of total surveyed property owners.
3. Projects which have a demonstrated level of support (65% of total surveyed property owners) will be put forward for further consideration and inclusion in a future capital works program and subsequent budget.
4. Plans, specifications and estimated costs are to be prepared.

PREPARATION OF SCHEME

1. The method of apportionment is determined based on the requirements to be fair, reasonable, equitable and past practice. To ensure that the method of apportionment is appropriate, the method to be adopted generally takes into account prior determinations of VCAT, current Local Government Act Regulations and Guidelines and Council's Infrastructure Design Guidelines.
2. Further support for projects will be ascertained through the conduct of a further survey of the property owners which will be affected by any proposal. This survey will include the following details:
 - The project design concept;
 - Estimated project costs;
 - Cost apportionment and contribution ratios (which include a 10% variance);
 - An explanation of the Special Charge Scheme process; and

- For larger schemes (e.g. road construction) details of the convening of a public meeting to further discuss the project.
3. For larger Schemes an Advisory Committee may be formed to assist Council Officers during the Scheme's design and construction. Council will be guided by any public meeting as to the need to appoint an Advisory Committee or implement systems for maintaining contributor input during preparation of the Scheme.
 4. Provision for feedback should be made available during consultation, which addresses the following:
 - Level of support;
 - Agreement with concepts;
 - Ancillary matters requiring attention;
 - Corrections and/or completion of required/agreed amendments to the proposal;
 - Contact details of the Special Charge Scheme Officer.
 5. Upon assessing community support for the proposal, Council shall take into account the requirements of the *Local Government Act 1989*.

STATUTORY REQUIREMENTS

COUNCIL REPORT –SCHEME RELEASED FOR PUBLIC CONSULTATION

1. A Council Report is prepared detailing the proposed works, estimated costs for the entire project, Council's contribution (based on Ministerial Guidelines), individual costs to each property owner and outcomes of the preliminary consultation.

Subject to the response received from the property owners demonstrating a majority support for the project, the officers would recommend that Council proceed with its Intention to Declare the Scheme and initiate its requirements under the *Local Government Act 1989*.

If Council resolves not to proceed, a moratorium of three years on instigating another similar proposal for a scheme in the street will apply.

- 1.1 If Council resolves to proceed, an advertisement for publication in a local circulating newspaper and Notice of Councils decision and the project will be provided to each of the affected property owners and call for submissions. Submissions are open for 28 days; and
- 1.2 Notice of the decision is placed in the rate book property files of all properties affected by the proposal; and
- 1.3 Notice of the decision is sent directly to each person who will be liable to pay the special rate or special charge within 3 working days of the day on which the public notice is published; and
- 1.4 Details of the proposed Declaration to be put out for display and be made available for public inspection at Council Offices.

COUNCIL REPORT – OUTCOMES FROM PUBLIC CONSULTATION AND FINAL APPROVAL

- 2 A Council report is prepared detailing the outcome of the submissions (if any) that are received, whether any further consultation has been held with the property owners and whether any changes have been made to the proposal. Council cannot Declare a Scheme if changes are required that increase the liability of any person unless:
 - 2.1.1 The alteration is made in response to a submission or objection in response to the proposed declaration: or
 - 2.1.2 The increase in liability of any person does not exceed 10%.
- 2.2 Subject to the review of submissions received (if any) and there being a majority support for the project, the officers would make a recommendation to Council to proceed with its Declaration of the Scheme.
 - 2.2.1 If Council resolves to proceed, Notice of the decision will be provided to each of the affected property owners. Such notice will also advise the property owners of their rights to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of Council's decision for the imposition of the special charge.
 - 2.2.1.1 Any person who makes an application to VCAT must make such an application within 30 days of the date of issue of the notice referred to in 2.2.1 above.
 - 2.2.1.2 Any expenses incurred by Council in relation to VCAT proceedings cannot be included in the final costs of the Scheme.

2.2.2 Notice of Council's decision is placed in the rate book property files for all properties affected by the proposal.

- 3 Subject to the determination of a VCAT appeal (if any) the scheme proceeds to the preparation of tender/quotation documentation in accordance with Council's Procurement Policy.

TENDER AND CONSTRUCTION OF WORKS

- 1 Construction plans, specifications and contract documentation is to be finalised.
- 2 Procurement of a contractor shall be in accordance with Council's Procurement Policy.
- 3 Upon awarding a contract for the construction works, the affected property owners will be advised in writing of the start day for the works including the contact details of the project supervisor.

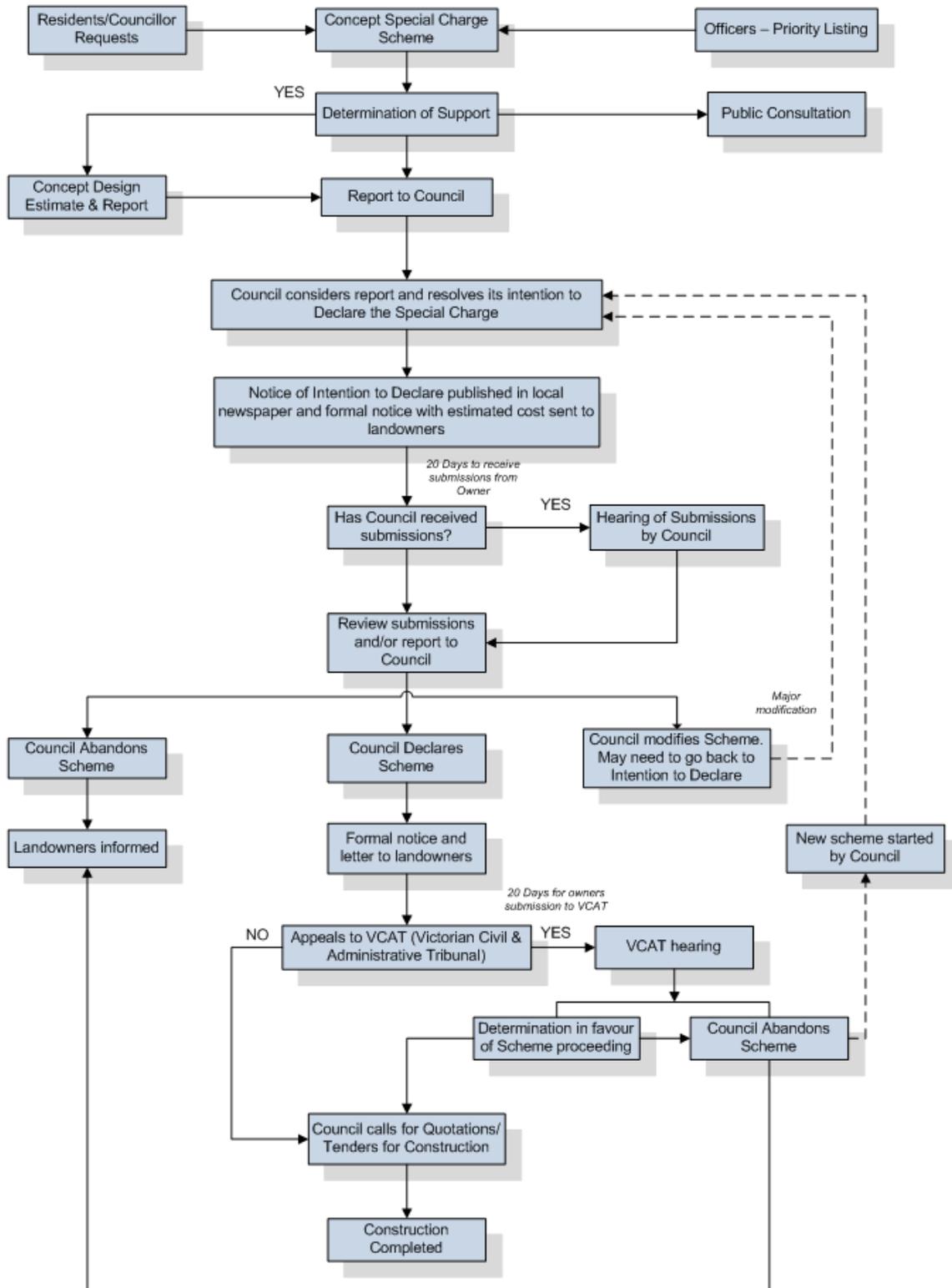
FINALISATION OF SCHEME

- 1 A scheme shall be finalised and all payments reconciled upon placing the works on maintenance by the project supervisor or within 2 months of final payment for the works, whichever is the later.
- 2 A reconciliation of the scheme costs for signing by the Chief Executive Officer shall be prepared and include the following:
 - 2.1 That the works are complete and the costs finalised; and
 - 2.2 A comparison of the estimated budget and final costs; and
 - 2.3 Where any variation has occurred, the detail of such variation; and
 - 2.4 Final apportioned liabilities.
- 3 Council will incur all costs of any variation in excess of 10% of the total estimated cost apportioned to the contributors.
- 4 Final apportioned costs are provided to the Revenue Office for inclusion in the rate book property files for all properties affected by the proposal and subsequent invoicing is sent out.

PAYMENT FOR SCHEME

- 1 Payment notifications together with an instalment notice will be sent to all contributors advising of final costs as apportioned in the next billing cycle. Billing cycles are the 1st of January, April, July and October of each year.
- 2 Contributors can pay their charge in one lump sum, or in quarterly instalments over a specified period of no more than 10 years as outlined in the Declaration for the scheme.
- 3 Where a resident chooses to pay their apportioned cost by way of instalments, interest (in arrears) will apply at the current bank borrowing rate plus 1%.
- 4 Contributors experiencing financial hardship may apply to Council for an alternative method of payment in accordance with the provisions of section 171 of the *Local Government Act 1989* and Councils “Rates and Charges Hardship Policy.”

ATTACHMENT 2 - SPECIAL CHARGE SCHEME FLOWCHART



ATTACHMENT 3 - SPECIAL CHARGE SCHEME PROCESS CHECKLIST

	PROCESS	RESPONSIBLE OFFICER	DATE & SIGNATURE
PRELIMINARIES	Initial Survey of Property Owners - No Costs	Scheme Officer	/ / 20
	Design Scope	Design Engineer	/ / 20
	Design Requested INTERNAL / EXTERNAL	Design Engineer	/ / 20
	Design Completed	Design Engineer	/ / 20
	Project Costs Estimated	Design Engineer	/ / 20
PREPARATION	Special Benefit Calculation	Design Engineer Scheme Officer	/ / 20
	Apportionment	Scheme Officer	/ / 20
	Survey of Property Owners - Estimated Costs	Scheme Officer	/ / 20
	Public Meeting (if required)	Design Engineer Scheme Officer	/ / 20
STATUTORY REQUIREMENTS	Council Meeting - Intention to Declare	Scheme Officer	/ / 20
	Public Advertisement / / 20	Scheme Officer	/ / 20
	Notification of Intention	Scheme Officer	/ / 20
	Input to Rate Book	Scheme Officer	/ / 20
	Submission Period Closes: / / 20	Scheme Officer	/ / 20
	Submissions Received: YES / NO	Scheme Officer	/ / 20
	Council Meeting - Declaration of Scheme	Scheme Officer	/ / 20
	Notification of Declaration	Scheme Officer	/ / 20
	Adoption of Scheme in Rate Book	Scheme Officer	/ / 20
	Appeal Period Closes: / / 20	Scheme Officer	/ / 20
	VCAT Appeal Lodged: YES / NO	Scheme Officer	/ / 20
TENDER/CONSTRUCTION	Contract Documentation Completed	Design Engineer	/ / 20
	Quotations/Tenders Sought	Design Engineer	/ / 20
	Quotations/Tenders Evaluated	Design Engineer	/ / 20
	Contract Awarded	Design Engineer	/ / 20
	Notification of Construction Start Date and Project Manager	Design Engineer	/ / 20
	Construction Starts	Design Engineer	/ / 20
	Construction Completed (on maintenance)	Design Engineer	/ / 20
COSTING	Costs Finalisation	Scheme Officer	/ / 20
	Costs Certified	CEO	/ / 20
PAYMENT	Cost Notification and First Installment to Property Owners	Scheme Officer	/ / 20
	Final Checking of Scheme Process	Director Corporate Services	/ / 20

ATTACHMENT 4 - SPECIAL CHARGE SCHEME OWNER INFORMATION SHEET

Special Charge Schemes are used as a tool for Council to provide property owners with an opportunity and formal process to construct infrastructure works or implement economic development projects to improve the amenity of their place of residence or work.

The *Local Government Act 1989* (the Act) provides Council with power to levy a special charge on any person whom Council considers will obtain a special benefit from the construction of unmade roads, footpaths, kerbs, drainage or other infrastructure works.

There are a number of unmade roads in the urban areas of the Mitchell Shire that are currently listed on Council's Road Register. There are also a number of locations which do not have footpaths, kerbs and/or drainage.

The Special Charge Scheme Policy is a document that operates in a legislative framework and works on the basis that it is not unreasonable for persons owning property to make an equitable contribution towards its development.

The Policy recognises the requirement for the majority of property owners to support any proposed special charge scheme for construction to proceed, unless there are extenuating circumstances (e.g. environmental, economic and social) that dictate that the Scheme should proceed.

Ministerial Guidelines have been prepared to assist and guide Councils in complying with the provisions of the Act. The Guidelines advise on how to calculate the maximum total amount that a council may levy as a special charge. Council may decide, at its own discretion, to levy a lower amount than the maximum total levy. However, the Guidelines do not deal with the criteria used to determine the actual apportionment of cost to be charged to individual owners.

The calculation of the actual apportionment of costs for each property is a separate process from the calculation of the maximum total levy. As each scheme is developed, an equitable and appropriate apportionment will be developed. It should be recognised that each proposal may have its own unique set of circumstances that have to be taken into account when calculating an apportionment.

The Council will consult with all property owners during the implementation of a scheme.

The Act provides for persons who are liable under a special charge scheme the right to make submissions about the proposal setting out reasons why they may not wish to participate in the proposed special charge scheme. If Council declares a special charge scheme, the affected persons may request a review by The Victorian Civil and Administrative Tribunal (VCAT) for an independent determination.

In addition to the appeal processes, if a majority of property owners object to the proposal within 28 days of receiving notice of Council's Intention to Declare a Scheme, Council cannot declare the Scheme.

Contributors to the scheme can pay their charge in one lump sum, or in quarterly instalments over a specified period of no more than 4 years as outlined in the declaration of the scheme. Where a contributor chooses to pay their apportioned cost by way of instalments interest (in arrears) will apply at rate no greater than that published in accordance with section 172 of the *Local Government Act 1989*.

Contributors experiencing financial hardship may apply to Council for an alternative method of payment in accordance with the provisions of section 171 of the *Local Government Act 1989* and Councils "Rates and Charges Hardship Policy."