

Contributory Schemes - Special Rates and Charges Policy

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Approval by:	Council	Responsible Officer:	Manager – Engineering Services and Operations
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1. Purpose

The purpose of the policy is to set out the principles of a Special Rates and Charges Scheme (Contributory Scheme) to fund Infrastructure works.

2. Context

In September 2004, Local Government Victoria established Ministerial Guidelines for the Implementation of Special Rates and Charges in response to amendments to the Local Government Act in 2003 to ensure fairness and equity when implementing Special Rates and Charges under Section 163 of the Local Government Act 1989.

The implementation of the Local Government Act 2020 started coming into effect on 6 April 2020, with no change pertaining to the existing guidelines relating to Special Rates and Charges.

This Policy is intended as a procedural guide for the creation and implementation of all Contributory Schemes, which accords with the Ministerial Guidelines.

Specific guidelines for determining Special and Community Benefits and thus the apportionment of cost referred to as the Maximum Total Levy are included as appendices to this report. Appendix 1 provides apportionment guidelines and methodology in respect of schemes for:

- Road Construction

- Footpath Construction

- Kerb and Channel Construction

- Drainage Construction

- Off-Street Car Parking

An operational guidelines and flowchart is shown in Appendix 2

3. Scope

This policy will apply to the investigation and development of all Special Rates and Charges Schemes.

4. References

- Local Government Act 1989 and amendments
- Ministerial Guidelines 2004

5. Definitions

The terms used in this policy are defined in the Local Government Act 1989 and the Ministerial Guidelines.

6. Council Policy

6.1 Scheme Initiation

The special rate or charge process may be initiated by Council, members of the public, residents within the area, Council Officers or as a result of requests from officers of Statutory Authorities with services in the area or providing service to the area.

6.1.1 Preliminary Consultation and Report

Except for the case where the process has been initiated by a petition containing the signatures of a two thirds majority of potential contributors, the relevant Director shall circulate a questionnaire to identify the potential contributors and their level of support for a scheme.

Note: At the Council meeting held on 26 June 2007, Council resolved that a 60% minimum level of support from contributing properties be a base requirement for a road construction scheme to be prepared and before committing Council funds in the Capital Works Program.

Council may consider proceeding with a particular scheme based on compelling reasons relating to issues of safety, health or amenity.

Having allowed fourteen (14) days for reply, the Responsible Officer shall prepare a preliminary report to the subsequent Council Meeting which may include the following:

- background information detailing the reason for canvassing potential contributors;
- a statistical analysis of results of responses and an assessment of their substance;
- the circumstances which may exist whereby the considerations of safety or other matters over-ride all other considerations;
- the outcome of public consultation;
- an expansion of the preliminary report taking into account the following matters where relevant:
 - the function of the infrastructure;
 - safety and amenity;
 - technical matters such as design speeds for local roads, impact on drainage and road networks;
 - environmental impact including removal or protection of native vegetation; and
 - cost to the community regarding options, including no action, i.e. cost to maintain the existing facility.
- Council contribution to the scheme;
- recommendation of any committee which may have been formed to participate with development of the functional and conceptual issues;
- recommendation to either abandon, amend or adopt the proposed scheme and/or proceed with detail design of the preferred option; and
- recommendation that affected owners/occupiers and any party which has registered its interest in the scheme in writing with Council be advised of Council's decision.

6.1.2 Five Year Capital Works Program

Following a resolution by Council to proceed with the scheme, a preliminary estimate should be referred to the Five year Capital Works program. When funding becomes available for the project, the scheme may continue.

6.2 Detailed Scheme Preparation

Following the Council resolution to proceed with the Scheme, the final design, estimates and apportionments shall be prepared. The officer responsible for the detailed preparation of the Scheme shall maintain a high level of consultation with parties to be affected by the proposal.

6.3 Statutory Requirements for Scheme Adoption

6.3.1 Declaration of Special Rate or Charge

- A proposed declaration must include a description of the works or services to be provided, the total cost of the works or services and the total amount of the special rates and charges to be levied. (This is in addition to information already required).
- When Council gives public notice of a proposed special rate or charge it must, within three working days, send a copy of the public notice to each person who will be required to pay the rate or charge.
- Before declaring a Scheme, Council must determine the “total amount” of the special rates and charges to be levied. The total amount may not exceed the maximum total amount calculated by the formula $R \times C = S$; where R is the benefit ratio, C is the total cost of the works or service and S is the total maximum amount.
- If Council proposes to levy a total amount that exceeds two thirds of the total cost, the affected ratepayers have a right to object and if the Council receives objections from a majority of those ratepayers within 28 days of the public notice it may not declare the scheme. (This is in addition to the existing Section 223 consultation process).
- If Council proposes to alter a declared special rate or charge in a way that will require an additional person(s) to pay, or that will involve a material increase in the amount that a person has to pay, it must give public notice of the proposal. The Public Notice in Section 163 (1B) must: Outline the proposed
- Declaration; show date on which it is proposed to make a declaration; and, allow inspection for at least 28 days after the notice and consider public submissions, in accordance with Section 223 of the Act.
- Council’s responsible officer shall report to Council with the details of the scheme, including calculation of Maximum Total Levy and the maximum amount that Council will levy as outlined in the Ministerial Guidelines dated 23 September 2004 shown in Appendix 3.
- Council or a committee of Council (established by Council) must consider any written submission made in respect of the scheme (S.223).

Also included in this report will be a Notice of Motion including:

- the period the Special Rate or Charge remains in force;
- the purpose of the Special Rate or Charge;
- a specification of the wards, groups, users or areas for which the Special Rate or Charge is declared;
- a specification of the criteria which forms the basis of the Special Rate or Charge. For local street construction this will be the ownership of properties that abut or are adjacent to the project and/or derive benefit from improved access and amenity;
- a specification of the manner in which the Special Rate or Charge will be assessed and levied. In general, apportionment should be carried out using the traditional methods well established through Administrative Appeals Tribunal precedent;
- an estimate of owners’ liabilities. This estimate shall include ancillary costs such as survey, design, supervision and administration. Ancillary costs may be estimated using the Association of Consulting Engineers Australia (ACEA) Principle Consultant rates;
- the impact of the Council’s liability to the contribution in the event of over expenditure;
- period of maintenance required for the works (if works are relevant to the rate or charge);
- incentives to be given to ratepayers as detailed in the policy;
- planning policies and specific objectives (if any) as referred in Section 185 of the Local Government Act 1989;
- the manner of payment of the Special Rate or Charge and the detail of the financing provisions to be accommodated by Council in regard to the scheme;
- that a Public Notice will be given of the declaration;
- that submissions made in accordance with Section 223 Local Government Act 1989 will be considered by Council; and
- a requirement for Council to establish a committee to consider any written submission made and hear people, in respect of the scheme (S223).

The Responsible Officer for the scheme in his report to Council will have regard to the Council policy which applies at the time in respect to the level of interest to be charged on the principal and any penalty interest which may apply to overdue repayment instalments.

6.3.2 Advice to Affected Persons

Should Council resolve to declare a Special Rate or Charge, a letter advising of this decision shall be sent to all persons required to pay and occupiers. This letter shall include the information to be contained in the Public Notice, including advice that submissions may be lodged by any interested party.

6.3.3 Public Notice

Following the declaration of the Special Rate or Charge a notice shall be published in a newspaper and or other relevant media generally circulating in the area setting out the declaration and stating that submissions will be considered in accordance with Section 223 Local Government Act 1989.

The Responsible Officer shall ensure that copies of the advertisement are retained on file as confirmation that the notice was given.

6.3.4 Consideration of Submissions

Written submissions received by Council within the time prescribed in the public notice will be considered by a committee nominated by the Council. Personal appearances to support written submissions will be encouraged.

However, submitters must state their desire to appear before the Committee in their written submission. This committee will then make a recommendation to full Council for a final decision.

6.3.5 Council Resolution following Submissions

Following consideration of the committee's recommendation Council may resolve to:

- prepare a new Special Rate or Charge Scheme due to the need to significantly modify the original scheme, therefore requiring the process to be recommenced;
- proceed with or without minor variation to the original declaration;
- abandon the scheme by not giving effect to the declaration to levy the Special Rate or Charge; or
- Council may refer a project, after the abandonment of a special charge scheme, to the future capital works program for consideration under the capital works ranking criteria for new works.

NOTE: Any variation in the amount of the proposed rate or charge which exceeds more than 10% of the amount specified in the original notice will require the scheme to be returned to Council for consideration of a new declaration.

All persons making submissions and all parties affected by the scheme shall be advised of Council's resolution.

In the circumstance that no submissions are lodged, Council may resolve to confirm, modify or abandon its original scheme

6.3.6 Levy of Special Rate or Charge

Council levies the Special Rate or Charge by sending a notice to all those liable to pay. This notice shall be in accordance with sub-sections 163(1A) and (1B) and (1C) of the Local Government Act 1989 and shall contain prescribed information detailed in Regulation 163(3).

6.3.7 Appeal

Following the levying of the Special Rate or Charge aggrieved persons may appeal to the Victorian Civil and Administrative Tribunal (VCAT) within one month after the date of issue of a notice to the person of the Special Rate or Special Charge or combination thereof. Section 185 of the Local Government Act sets down the criteria for an appeal and provides the following grounds:

- i. the works and projects or the period of maintenance for the purposes of which the Special Rate or Special Charge was imposed are not or will not provide a special benefit to that person; or
- ii. the basis of distribution of the rate or charge amongst those persons who are liable to pay it is unreasonable; or

- iii. if the planning scheme for the area contains any relevant policies or specific objectives, the works and projects proposed for the construction of a road or for the drainage of any land are inconsistent with those policies or objectives; or
- iv. if the planning scheme for the area does not contain any relevant policies or specific objectives, the works and projects proposed for the construction of a road or for the drainage of the land are unnecessary, unreasonable, excessive, insufficient, unsuitable or costly, having regard to the locality or environment and to the probable use of the road or drainage of land.

Following notification from the VCAT of appeals lodged, contact may be made with appellants in order to carry out negotiations prior to the hearing. Failing this the Responsible Officer will prepare Council's case for the VCAT hearing.

Note: An aggrieved person may in addition, or alternatively, appeal within 60 days to the County Court. Notice must be given to Council in the prescribed form for this to occur. (S. 184 L.G.A.). Grounds of appeal can be non-rateable land, assessment calculated incorrectly or the person considers that they are not liable to be rated.

6.3.8 Council Options Following VCAT Decision

Where VCAT upholds the scheme entirely or varies it with respect to the applicants, Council must proceed with the scheme as determined by VCAT.

Council can then:

- issue notices requiring payment within fourteen (14) days (S.167 (3)); or
- resolve to declare a variation to the scheme with all liable owners to be notified of the variation advice (S.166 (1) (b) and (2)); or

Where VCAT quashes a scheme, Council could only proceed to declare a scheme for the same street if the new scheme differs significantly from the quashed one and in particular in no way is inconsistent with VCAT's reasons for quashing the scheme as determined by VCAT.

Council may then:

- resolve the discontinuance of the declaration and provide all liable owners with discontinuance advice (S.164(2)); and
- significantly differ the scheme and proceed.

NOTE: (i) The issue of notice requiring payment (S.167 (3)) would follow Council's resolution to declare a variation and notification of variation.
(ii) Once a discontinuance notice has been sent out no further action is required.
(iii) The person who is liable to pay the Special Rate or Charge may apply to Council for permission to pay by a lump sum as determined between that person and Council S167 (4).

6.4 Scheme Implementation and Finalisation

6.4.1 Implementation Process

The Responsible Officer shall ensure that the tasks necessary to implement the scheme are carried out. Schemes which involve provision of services or Capital Works for the provision of infrastructure shall be competitively tendered in accordance with the procedure set down in the Council's Contract Administration Policy.

If the Tendered Price for the Contract works component of the Scheme exceeds the estimated cost by 10% or more, the proposal shall be referred to Council for reconsideration and a resolution sought to either abandon the scheme or accept the Tendered Price and proceed with the work.

6.4.1.1 Notice of Demand for Payment

Following the decision of Council to proceed with the Scheme and its implementation through the Public Tender Process, a Notice of Demand for Payment will be served on all contributors indicating all the relevant scheme details and the charge or rate based on the accepted tender price.

The notice shall clearly indicate that this demand for payment is based on the tendered price for the contract work forming part of the estimated scheme total cost and may be subject to variation of up to a maximum of 10% of the amount stated.

Should demand for payment exceed the maximum variation of 10% of the amount stated, then the amount in excess shall be funded by Council.

6.4.2 Reconciliation and Report to Council

6.4.2.1 Special Charge Schemes

Schemes shall be finalised and reconciled within two months of finalisation of the works.

The responsible officer shall report to Council advising that the works are completed and costs finalised. The report will include final apportionment of costs and details where variations from original estimates affect final apportionments costs.

NOTE: In any case where the Special Rate or Charge is varied by any amount, notice is required to be given to all affected parties pursuant to Section 166(2) of the Local Government Act 1

7. Related Documents

The policy document is related to the Local Government Act 1989.

8. Administrative Updates

From time to time, circumstances may change leading to the need for minor administrative changes to this policy. Where an update does not materially alter this policy, such a change may be made administratively. Examples of minor administrative changes include changes to names of Council departments or positions, change to names of Federal or State Government departments or a minor amendment to legislation that does not have material impact. Where any change or update may materially change the intent of this policy, it must be considered by Council.