



COUNCIL POLICY

Council Policy Title:	Special Rate and Special Charges
Council Policy ref. no:	11.3
Responsible Department:	Infrastructure and Services
Date of adoption/review:	23 October 2013

1. PURPOSE

This policy has been developed to ensure the procedures for the creation and implementation of contributory projects in providing works and services authorised under the *Local Government Act 1989* are consistent and equitable, and as a guide for the fair and reasonable distribution of costs for those persons obtaining a special benefit.

2. INTRODUCTION

As part of the Council Plan, this policy assists Council with implementing its strategic objectives to narrow the infrastructure funding renewal gap and develop, maintain and manage the road network and other infrastructure assets to meet community needs.

3. DEFINITIONS

See Attachment 1 "Guidelines – Special Rate and Special Charges".

4. POLICY

4.1 Application

This policy shall apply to the following special rates and charges schemes:

- (i) **Works Schemes** that involve construction of an item or items of infrastructure, and includes but is not limited to the following:
 - a) urban street construction,
 - b) easement drainage,
 - c) local area traffic management,
 - d) footpath construction,
 - e) kerb and channel construction; and
 - f) carpark construction.

Subject to Council's Road Maintenance Policy projects involving the reinstatement of infrastructure to its previously constructed condition, (ie. reconstruction and maintenance projects,) will not be subject to full cost recovery.

- (ii) **Service Schemes** that provide a particular service or bundle of related services; and
- (iii) **Special Purpose Fund Schemes**, where monies raised by the special rate or charge go into a fund for a specified purpose and may include a mixture of works and/or services. In these schemes, the precise services and/o works are not fully specified in advance and a process is therefore established to allocate the funds raised. (e.g. Shopping Centre promotion fund, Tirrengower Drainage Scheme)

4.2 Project Initiation and Preliminary Report

A special rate or special charge process may be initiated by any individual, group or combination of, ratepayer, Councillor or council officer.

Upon receipt of an initiating document, the relevant General Manager shall prepare a preliminary report.

This preliminary report is to generate a decision as to whether or not to proceed with a process of preliminary consultation. The decision to proceed or not to proceed further will be the responsibility of the relevant General Manager as delegated by Council.

The preliminary report will address the following background information:

- a) the scope of the works;
- b) any previous proposal which may have been abandoned or was unsuccessful;
- c) confirmation that the works are within the policy of application of special rates or special charges and function of Council;
- d) whether the works will be of special benefit to the persons required to pay the special rate or charge;
- e) the need for the project taking into account matters of health, safety and amenity;
- f) identification of the likely beneficiaries of the project;
- g) options for the scope, staging and funding of the project; and
- h) a preliminary cost which provides a broad indication of costs per affected property and options for distribution of costs.

4.3. Preliminary Consultation

Following a decision to proceed with preliminary consultation, the relevant General Manager shall invite persons considered to receive a special benefit from the proposal to attend an initial meeting to discuss the options, concept plans, costing, procedures and timing of the proposal. The General Manager will also undertake a survey to determine the level of support for the project.

The meeting and survey is to seek the following information:

- a) whether there is broad support for the scope of the works,

- b) the preference as to the type of design and construction if there are options,
- c) whether there is agreement for the project considering health, safety and amenity,
- d) comments on the preliminary costs including what would be incurred per affected property,
- e) comments on the options for distribution of costs payments that are available and preferred preference of payment; and
- f) nominations for establishment of a "Community Reference Panel"

4.4 Initial Report to Council

The relevant General Manager shall present an initial report to Council.

The report shall address the following items:

- a) outcome of the public consultation and results of survey;
- b) expansion of the preliminary report taking into account the following matters where relevant:
 - (i) the function of Council infrastructure.
 - (ii) health, safety and amenity.
 - (iii) technical matters such as topography of the area, design speeds for local roads, impact in respect to drainage works, road networks traffic volumes etc.
 - (iv) environmental impact e.g. removal of vegetation
 - (v) cost to the community regarding options that include no action (i.e. continuing to maintain the existing facility).
- d) proposed Council contribution to the project, if any;
- e) advice from the Community Reference Panel; and
- f) the need to or not to proceed considering the following matters :

The initial report should include a recommendation that Council either abandon or proceed with the preparation of a Special Rate or Special Charge report.

The Council in determining whether to proceed to a special rates and/or charges report shall have regard to the contents and recommendations of the initial report and:

- The convenience and standard of access to properties by occupiers, servicing authorities and emergency services.
- Motorist and pedestrian safety (includes cyclists and motorised scooters and wheel chairs).
- Problems in providing for stormwater drainage of the adjoining properties and the roadway and the lack of legal points of discharge (if any).
- The importance of the street in the overall traffic system.
- The level of demand for maintenance or improvement works.
- The economics of Council providing maintenance works at the cost to the ratepayer over the long term.
- Such other matters as the Council deems relevant.

4.5 Detailed Project Preparation

If Council decides to proceed with a special rate report then the project detailed design, estimates and apportionment are to be prepared. This should be prepared in consultation with owners through the “Community Reference Panel”.

4.6 Special Rate or Special Charge Report

A detailed report is to be presented to Council. This report is to include the following:

- a) **Objectives of the Proposal**
including special benefit, special rate or special charge,
- b) **Detailed Design Plans**
defining the scope of the project and to include sufficient information to determine the beneficiaries of the special charge.
- c) **Detailed Estimate of Cost**
to include administration costs and a separate estimate of Council’s contribution where appropriate,
- d) **The Criteria**
to include the special benefit and the degree of special benefit to beneficiaries.(refer Attachment 1 & 2).
- e) **Apportionment of Costs**
a detailed apportionment of the estimated cost to each beneficiary including detailed description of the method of distribution of cost amongst beneficiaries. This must include “total cost’, ‘special benefit’ ‘total special benefit’, ‘community benefit and, ‘maximum total levy’. (refer Attachment 2).
- f) **Recommendation for Special Rate or Special Charge**
The report is to include a recommendation to notify of the intention to declare a special rate or special charge or a combination of both to defray the cost of the proposed works.

The Recommendation of Council’s intention to Declare a Special Rate or Charge will include:

- *the period the Special Rate or Charge remains in force;*
- *the purpose of the Special Rate or Charge;*
- *a description of the groups, users or areas for which the Special Rate or Charge applies;*
- *a definition of the land in relation to which the Special Rate or charge is declared;*
- *a definition of the criteria which forms the basis of the Special Rate or Charge;*
- *a definition of the manner in which the Special rate or Charge will be assessed and levied;*
- *the amount for which the person will be liable and required to pay;*
- *the manner of payment of the Special Rate or Charge;*
- *the penalties for failing to pay;*
- *any incentives available for early payment;*

- *details of the public notice to be given of the intention to declare a Special rate or Charge; and*
- *that submissions made in accordance with section 223 of the Local Government Act 1989 will be considered by Council, or by a special submissions committee nominated by Council for that purpose.*

4.7 Notification to Declare a Special Rate or Special Charge Declared

Upon Council Notifying of its intention to declare a special rate or special charge the procedures detailed in sections 163,163A, 164, 165, 166, 185 and 223 of the *Local Government Act 1989* shall be followed.

The Council hereby authorises the General Manager to carry out administrative procedures necessary to enable the Council to carry out the functions under these Sections of the *Local Government Act*.

4.8 Council to Decide Whether to Proceed

If as a result of submissions received under section 223 of the *Local Government Act*, Council resolves for a substantial variation to the cost or change to the basis of distribution of costs, Council shall resolve to halt the process and return it to the stage of initial declaration in order that those parties that did not make a submission through acceptance of the initial proposal are given the opportunity to make submissions to Council in respect to the substantially modified proposal.

A guide to "substantial" projects has been determined by Council. Issues other than cost may also be determined as substantial and the discretion of Council can be applied.

Generally projects should be halted where a cost increase of greater than 10% or redistribution of costs imposing burdens on beneficiaries greater than 10%.

4.9 Council Resolution

Following consideration of written or verbal submissions in accordance with section 223 of the *Local Government Act 1989* Council shall resolve to abandon, modify or declare the special rate or charge as appropriate.

Anyone making a submission and all parties affected by the scheme are to be advised of the Council's resolution.

4.10 Levy the Special Rate or Special Charge

After consideration of submissions and the special rate or charge is declared with or without modification, Council may levy the special rate or charge.

Although required only to notify those parties that have made a submission in respect to the special rate or charge, all beneficiaries who are liable to pay the special rate or charge shall be notified of the decision and their rights of appeal to the Victorian Civil and Administrative Tribunal (VCAT).

4.11 Notification of Appeal by Victorian Civil and Administrative Tribunal

If an appeal to Council's decision to levy a special rate or charge is lodged with the VCAT:

- a) Council may determine to contact and negotiate with the applicants prior to the VCAT hearing.
- b) The relevant General Manager shall co-ordinate Council's case for the VCAT hearing.

4.12 Notification of Final Decision

After notification of the VCAT's decision and Council's final decision all beneficiaries shall be notified of Council's final decision and the implications of that decision, whether Council is to proceed with the scheme, vary the scheme or discontinue.

4.13 Tenders for Works or Service

Tenders shall be invited for the works in accordance with Council's Tendering and Contracts policy.

4.14 Quotation or Tender Price Exceeds Estimate

The relevant General Manager shall proceed with the contracts if the quotation or tender price is below the estimate.

If the price exceeds the estimate by 10 percent or less and the relevant General Manager is confident that it is the best price attainable, the scheme shall proceed and the affected property owners are to be advised of the complete situation.

If the price exceeds the estimate by more than 10% the scheme shall be resubmitted to Council for reassessment. If the price is considered a 'material variation' in the amount payable, and if Council decides to continue with the Scheme, Council must treat the variation as if the variation were a declaration.

If the price exceeds the estimate, the relevant General Manager at their discretion may recall tenders.

4.15 Construction

Commencement

Works are to commence within a reasonable period and as soon as practicable after the notification of a special rate or special charge and appointment of contractor. Works should begin within 12 months of levying of the special rate or special charge or as specified in the declaration.

Completion

General contract obligations will require completion of the works within 6 months of practical completion.

4.16 Final Report to Council

The relevant General Manager, after completion of the contract shall submit a report to Council stating the final cost, and final apportionment of costs. The report should include the reasons for any cost variation.

4.17 Advise the Beneficiaries of Final Costs

All persons who are liable to pay the special rate or special charge must be notified of any variation and final cost.

4.18 Administration Costs

Design, supervision and administration are costs that will be included to convey the "user-pay" and "cost-recovery" principles.

Design costs shall be charged at a rate of :

- (a) 10% for in-house designs; or
- (b) actual design cost where Consulting Engineers or other professionals are engaged.

Council shall add :

- (a) an administration fee for servicing the special rate project of 3% of cost of the project; and
- (b) a supervision fee of 2½% for supervising the works and administering the contract.

4.19 Legal Costs

Legal costs associated with land acquisition and title information and implementing the special rate should be a charge against the scheme. Costs do not include any expenses incurred or anticipated to be incurred which relate to any proceedings or anticipated proceedings before VCAT.

4.20 Payment Options

Section 167 of the *Local Government Act*:

- “(3) A special rate or special charge is due and must be paid by the date specified in the notice requiring payment, which is a date not less than 28 days after the date of issue of a notice.*
- (4) A person who is liable to pay a special rate or special charge must pay the special rate or special charge –*
 - (a) as a lump sum; or*
 - (b) if the Council has provided an instalment plan and the person has elected to pay the special rate or special charge in accordance with the instalment plan, in accordance with the instalment plan.*
- (5) If the performance of the function or the exercise of the power in respect of which a special rate or special charge is to be levied relates substantially to capital works, the Council must provide an instalment plan in accordance with subsection (6).*
- (6) An instalment plan –*
 - (a) must provide for instalments to be paid over a period of at least 4 years;*
 - (b) may include in the amount of an instalment a component for reasonable interest costs the total of which must not exceed the estimated borrowing costs of the Council in respect of the performance of the function or the exercise of the power in respect of which the special rate or special charge is to be levied by more than 1%.”*

4.21 Incentives for Prompt Payment

(Section 168 *Local Government Act*) allows a Council to declare incentives. In general, incentives will not be offered as works are charged at cost.

4.22 Apportionment of the Special Rate or Special Charge

The method of apportionment of the special rate or special charge is to be based on fairness, equity and betterment to each property within the scheme area.

Council will consider making a contribution where the standard of construction for any component is in excess of what is required to serve the abutting property owners by virtue of Council's infrastructure standards.

The special rate and special charges criteria - Attachments 1 and 2 relate directly to this policy.

5. POLICY IMPLEMENTATION

This policy will be implemented by Council and be subject to periodic review.

6. ATTACHMENTS

Attachment 1 “Guidelines – Special Rate & Special Charges”

Attachment 2 “Criteria and Manner of Apportionment to be adopted for Special Rates & Charges.”

ADOPTED/AMENDMENT OF POLICY

Policy Review Date	Reason for Amendment
24 May 2006	28 October 2009
28 October 2009	Review
23 October 2013	Review

ATTACHMENT 1 – Guidelines Special Rate & Special Charges

DEFINITIONS :

Arterial Road	Principal route in road network carrying high traffic volumes and a high proportion of through traffic and declared as such by VicRoads.
Collector Road	Route which collects and distributes traffic from a precinct.
Community Benefit	Exist where there is a tangible and direct benefits to the people in the community.(Not all Schemes have Community Benefits)
Community Reference Panel	Group of nominated residents to represent the interests of parties affected by the proposed scheme
Construction	New works providing an asset which the public has previously not had access to or over
Easement Drain	Drainage usually provided at the rear of the properties located on the low side of a road constructed within an easement set aside for drainage on title. Concentrated runoff from roof and balance of property is connected to this drain
Govt Rd/Private St	Generally as set out on parish plans of subdivisions respectively, however in the context of these guidelines there is no distinction between these two categories
Local Precinct	An area characterised by its own local identity and boundaries eg., residential, commercial, industrial.
Local Road	Route specifically to serve a small number of residential (or commercial/industrial) properties. Predominantly used by abutting property owners.
Main Drain	Principal drainage route serving a catchment or part catchment into which street and easement drainage is discharged either directly or indirectly
Maintenance	All works necessary to ensure that previous construction either in full or part is kept in a useable, safe condition.
Outfall Structure	Drainage Works at confluence of main drain with outlet eg. river, lake, bay, water course.
Special Benefit	Means a tangible benefit (including direct services, identifiable improvements in physical and environmental amenity, and improved safety and economic benefits), over and above that available to persons who are not the subject of the Special Charge.
Street Drainage	Drainage provided which is necessary to drain the street and into which adjoining properties may be connected.
Subdivision Road	Road established through the process of Subdivision. It may serve residential, commercial and industrial areas.
Street	Alternative term for road.

NOTES :

1. Projects in the current Budget will be funded as provided for.
2. In apportioning costs, Council may use "Benefit Units" as means of ensuring equity between contributors. The basis for benefit units will generally be area or number of separate residential titles into which the land may be subdivided.
3. In instances of subdivisional development and major site development eg. Shopping Centres, Hotels/Motels, Recreation developments. Council reserves the right to depart from these guidelines and impose conditions relating to provision of infrastructure, through a Planning Permit process or by negotiation.
4. The guidelines are based on the 'User Pays' system which benefit the key criterion to be used in apportioning costs.
5. Council may amend these guidelines from time to time and in instances where they do not cover specific circumstances, Council will endeavour to apply the true intent of the guidelines to cover such instances.

ATTACHMENT 2 – Criteria and Manner of Apportionment to be Adopted for Special Rates and Charges

Project Description	Principal	Basis of Apportionment of Costs	Special Notes
1. ROAD CONSTRUCTION AND ASSOCIATED WORKS (This section does not apply to any roads funded by VicRoads)			
1.1 Arterial Road			
<i>Road Pavement</i>	Fully funded by Council where road performs an arterial function except where road provides access to abutting properties, owners may be charged to the equivalent of a 7.6 m standard road pavement. This width may vary in the case of Commercial/Industrial precincts and each case will be considered on its merit.	Accrued benefit with calculations based on property frontage, area or a combination of both or benefit unit.	Includes construction of service roads, however, Council may contribute a portion of the costs where the road receives substantial use for reasons other than property access.
<i>Kerb & Channel</i>	Fully funded by abutting property owners except where kerb and channel is placed solely to provide drainage or protection for an arterial road pavement.	Accrued benefit with calculations based on property frontage	
<i>Footpath</i>	Fully funded by abutting property owners except where it can be demonstrated that pedestrian traffic is predominantly external or is influenced by a major development eg. shopping centre. In this instance Council may fund up to 50% of the cost.	Accrued benefit with calculations based on property frontage.	Where footpath is provided wider than normal, to accommodate cyclists, Council shall meet additional costs.

ATTACHMENT 2 – Criteria and Manner of Apportionment to be Adopted for Special Rates and Charges

Project Description	Principal	Basis of Apportionment of Costs	Special Notes
1.2 Collector Road			
<i>Road Pavement</i>	Funded by abutting property owners where road provides access to abutting properties and acts as a collector function to immediate residential precinct. Where collector function is based on larger, external area, Council shall fund the road pavement required which is greater than that of a 7m standard. This width may vary in the case of Commercial/Industrial precincts and each case will be considered on its merit.	Accrued benefit with calculations based on property frontage, area or a combination of both or benefit unit.	Includes construction of service roads, however, Council may contribute a portion of the costs where the road receives substantial use for reasons other than property access.
<i>KERB & CHANNEL</i>	Fully funded by abutting property owners	Accrued benefit with calculations based on property frontage	
<i>Footpath</i>	Fully funded by abutting property owners except where external influences affect pedestrian flow eg. shopping centre development. In this instance Council may meet up to 50% of the costs.	Accrued benefit with calculations based on property frontage	
1.3 Local Roads			
<i>Road Pavement</i>	Fully funded by abutting property owners	Accrued benefit with calculations based on property frontage or area or a combination of both or benefit unit.	
<i>Kerb & Channel</i>	Fully funded by abutting property owners	Accrued benefit with calculations based on property frontage or area or a combination of both or benefit unit	

ATTACHMENT 2 – Criteria and Manner of Apportionment to be Adopted for Special Rates and Charges

Project Description	Principal	Basis of Apportionment of Costs	Special Notes
<i>Footpath</i>	Fully funded by abutting property owners	Accrued benefit with calculations based on property frontage or area or a combination of both or benefit unit	
1.4 Footpaths - General	Funded by Council, property owners or a combination	Accrued benefit to property owners or 'catchment' of property owners, balanced by benefit to overall community. Calculations based on property area, number of allotments or distance from path.	
1.5. Road Maintenance	Fully funded by Council subject to Council's Road Maintenance Policy		
2. DRAINAGE			
2.1 Easement	Fully funded by owners deemed to receive benefit	Based on equivalent contributing property area and accrued benefit. Receivers and dischargers of water to receive benefit at an equal rate.	
2.2 Main	Fully funded by owners in catchment deemed to receive benefit	Based on equivalent <u>contributing property area</u> and accrued benefit	<p>Major works such as realignment of water courses may be funded by Council</p> <ul style="list-style-type: none"> • Major outfall structures may be funded in whole or part by Council. History of the outlet shall be taken into consideration.

ATTACHMENT 2 – Criteria and Manner of Apportionment to be Adopted for Special Rates and Charges

Project Description	Principal	Basis of Apportionment of Costs	Special Notes
			<ul style="list-style-type: none"> • In assessing property owner's level of contributions, Council shall take into consideration any funds previously provided by such owners. eg. developer drainage levy. • Property owners responsibility will be considered to include the proper and effective disposal of stormwater to an approved outfall regardless of whether or not there is a direct pipe connection between the property and the outfall • Minimum pipe size for purpose of the policy shall be 225 mm diameter <p>Street drainage generally part of a street construction scheme with costs combined.</p>
2.3 Street Drainage	Fully funded by abutting property owners deemed to receive benefit if not part of street construction	Accrued benefit with calculations based on property frontage, area, a combination of both or equivalent contributing area	
2.4. Drainage Maintenance	Fully funded by Council		
3. CARPARKS			
3.1 Reserves	Generally funded by Council however a cost shared arrangement may be determined with users or user groups to provide carparking facilities.	By negotiation with Council taking into account benefit to users and general public	

ATTACHMENT 2 – Criteria and Manner of Apportionment to be Adopted for Special Rates and Charges

Project Description	Principal	Basis of Apportionment of Costs	Special Notes
<p>3.2 Shopping Centres</p>	<p>Fully or partly funded by shop owners</p>	<p>Degree of direct benefit to shop owners. Calculations based on property area, nett annual value, carparking requirement for premises under Planning Scheme, distance of property from carpark or a combination of these.</p>	
<p>4. LOCAL AREA TRAFFIC MANAGEMENT</p>			
<p>4.1 Collector, arterial system or perimeter of local precinct</p>	<p>Fully funded by Council or other Authorities</p>		
<p>4.2 Local Precinct</p>	<p>Fully or part funded by abutting owners</p>	<p>Accrued benefit to abutting owners, however in determining Council contributions the following will be taken into consideration :</p> <ul style="list-style-type: none"> a) Volume of through Traffic b) Generation of traffic by abutting developments c) Degree of residential nature of street d) Nature and extent of problem eg., noise, accident/blackspot location. 	

ATTACHMENT 2 – Criteria and Manner of Apportionment to be Adopted for Special Rates and Charges

Project Description	Principal	Basis of Apportionment of Costs	Special Notes
5. STREETSCAPES			
5.1 Road / Street	A cost shared arrangement may be determined with property owners	By negotiation with Council taking into account potential accrued benefits to property owners	
5.2 Shopping Centres & Precincts	Fully or part funded by shop owners	Degree of direct benefit to shop owners. Calculations based on property area, nett annual value, proximity of premises to site or a combination of the above	