

Special Charge Scheme for Infrastructure Works

Title:	Special Charge Scheme for Infrastructure Works
Type:	Council
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1. Purpose

This policy will aim to achieve an equitable and consistent approach to the implementation and administration of Special Charge Schemes undertaken by Murrindindi Shire Council pursuant to Section 163 of the Local Government Act 1989.

2. Rationale

Section 163 of the *Local Government Act 1989* (the Act) is intended to enable a Council to recover the cost of capital works from property owners where those works will be of a special benefit to them. Often such works will be of financial benefit effected in the increased property value when infrastructure is improved.

This policy will guide Council and its residents to develop appropriate local Infrastructure to suit the Community's specific needs and will ensure fairness and equity in the imposition of a Special Charge.

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 certain members of the community. Those members may be required to pay a Special Charge, in accordance with Section 163 of the Act.

4. Definitions

Reference Term	Definition
Special Charge Scheme	A special rate or charge or combination of both only for the purpose of defraying any expense or 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.
Liability to contribute	Where Council considers the performance of a function or the exercise of a power of the Council is of special or community benefit to any property, person or entity.
Special Benefit	The benefit, resulting from the proposed infrastructure work that is additional to or greater than the benefit to other properties in the broader community.
Community Benefit	Where the works or services will provide a tangible and direct benefit to people in the broader community.

5. Policy

The guiding principles of this policy will include the following:

- All relevant circumstances will be properly defined, considered and taken into account when Special Charge Schemes are reported to Council for adoption;
- Opportunities to maximise community participation and consultation will be sought to ensure fairness and equity;

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- Any imposition of Special Charges and the apportionment of costs on the basis of total benefits, including special benefits and community benefits, for the persons included in the Special Charge Scheme will be done in a manner that ensures fairness and equity;
- The resources of Council will be used to best meet the needs of the local community;
- Council will implement this policy within the legislative framework and procedures for implementing Special Charge Schemes;
- Council will ensure transparency, accountability and consistency in all decision making;
- Where Council does not contribute more than a one third of the costs, a Special Charge Scheme will only proceed where there is 60% or more support from affected property owners;
- The decision of Council to declare a Special Charge and to contribute to a Special Charge Scheme is (subject to any requirements in the Act to the contrary) entirely a matter for the discretion of Council, to be exercised as Council sees fit and subject to Council resolution;
- The extent of works for a street construction scheme will be determined by Council for the preliminary investigations and consultation so as to match into existing infrastructure in an acceptable manner.

Procedure for Establishing a Special Charge Scheme

The following section sets out the process to be followed for the initiation of a Special Charge Scheme to ensure that they are completed in accordance with the Act and within appropriate timeframes and budget.

Preliminary Steps – Initiation

A Special Charge Scheme investigation will normally be initiated through a request from landowners. A scheme may also be initiated by Council officers for Council approval to address maintenance requirements or from requests by residents to upgrade unsealed roads to sealed roads.

To ensure effective use of Council resources the initiation of an investigation and consultation process for a proposed scheme requires demonstrated support of landowners by a significant number of property owners who would be liable to contribute to a proposed scheme. This request will be made in writing to Council.

After this request has been received, Council will gauge support for a scheme through the conduct of a survey of the property owners who will be affected by any proposal. This survey along with accompanying information will include the following information:

- Outline of what a special charge scheme is and how it works.
- Relevant information on environmental and amenity issues.
- Outline of what the concerns are with the proposed area requiring a scheme and why a Special Charge Scheme is being investigated.
- Details of how the consultation process works.
- An estimated cost range for each property and payment options.
- A questionnaire will be included, requesting owners to vote on whether or not they support the scheme. The questionnaire is to advise that no response to the questionnaire will be treated as a 'no' vote.
- Advice that in order for the scheme to proceed a minimum of 60% support is required from affected property owners.

To ensure that all property owners involved in the scheme have ample opportunity to participate in the process, any property owner who does not return the questionnaire will be sent a second letter by registered mail.

First Report to Council

A first report is presented to the Council outlining the proposed Scheme. The report will detail the proposed works, estimated costs of the whole project as well as individual costs to each property and

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any applicable Council contribution. The report will include the outcome of preliminary consultation with the property owners including a summary of comments made on the questionnaire.

Subject to the response received from the property owners demonstrating a 60% or greater support for the project, the officers would seek resolution from Council to proceed with its Intention to Declare the Scheme and initiate the requirements under the Local Government Act.

If support for the scheme is less than 60%, the report will seek a resolution as to whether or not to proceed with further consultation.

Factors to be considered will include:

- The level of support based on the questionnaire.
- The seriousness of the existing problem.
- Impact of not proceeding.
- The benefits the scheme would deliver to directly affected residents and the community.
- The extent of complaints regarding the area.
- Any required Council contribution.

If sufficient support is not demonstrated for a proposed scheme then it will not be considered again until four year period has elapsed and only on further request from owners liable to contribute.

Council Resolves to Proceed

If Council resolve its Intention to Declare a Special Charge, Council will give public notice of its intention at least 28 days before making a formal declaration. Public notices will be placed in a newspaper or newspapers that have been chosen by Council and which circulate generally throughout the Shire.

The notice will include:

- An outline of the proposed declaration, and
- The date on which it is proposed to make the declaration, and
- Advise that copies of the proposed declaration are available for inspection at Council offices and on Council's website for at least 28 days after the publication of the notice.

Council must send a copy of the notice to all property owners who are liable to pay the Special Charge within 3 working days of the notice being published. This notice will invite submissions under Section 223 of the Act.

Right to Object

Where Council will recover more than two thirds of total cost, any person required to pay the special charge is entitled to exercise the right of objection. Where this additional objection process is applicable the public notice will also include:

- Which persons have a right to object to the proposed declaration, and;
- How those persons may object, and;
- That the objections must be lodged in writing within 28 days of the publication of the notice.

Council cannot proceed to make the proposed declaration if objections are received from the majority of affected property owners.

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Second Report to Council

A second report is presented to the Council. The report will detail the outcome of submissions (if any) that are received and whether any further consultation has been held with the property owners and discuss if there have been any changes made to the proposal.

Subject to the consideration of submissions received (if any), the officers would seek resolution from Council to adopt, modify or abandon the scheme.

Council cannot declare a Scheme if changes are required that increase the liability of any person unless:

- the alteration is made in response to a submission or objection in response to the proposed declaration; or
- the increase in the liability of any person does not exceed 10%.

Council Resolves Not to Proceed

If, for any reason, Council resolves not to proceed, a moratorium of four years on instigating another similar proposal for a scheme will apply.

Final Report to Council

If Council has resolved to adopt the scheme, a final report is presented to Council with a recommendation from officers to proceed with the declaration of Special Charge Scheme.

Council Resolves to Declare a Special Charge Scheme

If Council resolves to formally declare the scheme, the special charge is levied by Council sending a notice to all property owners who are liable to pay the levy.

Appeal Process

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.

Any person who makes an application to VCAT must make such application within 28 days of the date of issue of the notice referred to above.

If the matter is referred to VCAT, the outcome of the hearing will be reported to Council for consideration. Council will notify all contributors of the VCAT determination and any Council resolution resulting from the report.

Apportionment of Costs for Special Charge Schemes

Cost Apportionment Principles for Road Construction

The calculation of the maximum total levy for a Special Charge Scheme must comply with Section 163(2), (2A) and (2B) of the Act and the Guidelines made by the Minister for Local Government pursuant to Section 163(2C) of the Act.

For the purposes of this policy, the following sections relate to road construction:

- Benefit Unit - each property deemed to receive equal benefit
- Amenity Unit - based on frontage a property has to the scheme
- Easement Drainage.

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Apportionment of 75% of Road construction cost on the basis of Benefit Unit

A property derives special benefit through having its road constructed. This benefit may be made up of issues including reduction in dust, better/smooth access, reduced vehicle operating costs, environmental benefits and control of storm water runoff from the road. This benefit is not necessarily related to a property's dimensions, so the concept of Benefit Unit is used as follows:

- All properties whether developed or otherwise, to which direct access may reasonably be obtained by means of the streets to be constructed shall be apportioned one (1) Benefit Unit.
- All properties that have a side or rear boundary to the scheme shall be apportioned one half (0.5) of a Benefit Unit.
- Units or dual occupancies that have a front boundary to the scheme shall be apportioned 0.6 of a Benefit Unit.
- Units or dual occupancies that have a side or rear boundary to the scheme shall be apportioned 0.3 of a Benefit Unit.
- The Benefit Unit for properties, where there is already a section of constructed road in front of the property, will be based on a percentage of constructed road versus unconstructed road.
- For properties which are considered to have subdivisional potential where the owners have demonstrated an intention to subdivide by applying for a planning permit either prior to or during the scheme process up to the reconciliation stage, these properties will be apportioned an extra Benefit Unit for each additional property for the purpose of being "fair and equitable" in regards to the special benefit that these properties will receive.

Apportionment of 25% of the Road Construction Cost on the Basis of Amenity

The benefit that a property receives from road construction varies to some extent with the exposure that it has to the road. For example, a property with a very long frontage has more exposure to the dust problem from a gravel road and, therefore, is considered to receive more benefit from construction of the road than does a differently shaped property that has a relatively small frontage. This difference in relative benefit is not generally proportional to the difference in dimensions between properties, which is why only 25 percent of the total cost of road construction is apportioned on this basis. The concept of Amenity Unit is outlined as follows:

- All properties fronting the scheme will be apportioned one (1) Amenity Unit per metre of front boundary for that property.
- All properties with a side boundary to the scheme will be apportioned one half (0.5) Amenity Unit per metre of side boundary for that property.
- All properties with a rear boundary to the scheme will be apportioned one half (0.5) Amenity Unit per metre of rear boundary for that property.

Apportionment of Easement Drainage Cost

In the case of typical new easement drain installation, the full cost of the work is to be charged to property owners. The cost is to be equally shared between the properties on the high side of the drain where the legal point of discharge is to the new drain and properties on the low side that receive protection by the drain. This is consistent with the principle that upper and lower landowners receive equal benefit. The cost is to be based on total area of the properties with consideration being given to all relevant matters, including the natural slope of the land and the resulting flow paths.

Council Contribution

Council may consider a contribution where the works or services will provide tangible and direct benefits to the broader community (Community Benefit), other than those landowners determined as being liable for the special rate or charge.

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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 or indented parking.
- * The proportion attributed to community benefit, e.g. impact of through traffic or upstream flows.
- * The proportion attributed to any Council land that abuts the works, e.g. adjacent public open spaces, road reserve or community facilities.

Council is not required to levy a special rate or charge on any or every property that will receive a special benefit. A property with a special benefit may be excluded from the scheme for any of the following reasons:

- Council is unable to levy a special rate or charge on the property,
- The owner of the property has already contributed to the costs of the works through a development levy,
- Council considers that there are particular advantages for the municipality in excluding the property from the scheme,
- Council considers that the special benefits for the property are marginal and would not warrant including the property in the scheme, or
- Any other reason that the Council considers appropriate.

Tender and Construction Works

Council will develop construction plans, specifications and contract documentation and will be the overall Project Manager of the Special Charge Scheme finalised.

Procurement of a contractor shall be in accordance with Councils Procurement Policy.

Upon awarding a contract for the construction works, the affected property owners will be advised in writing of the starting date for the works including the contact details of the project supervisor.

Finalisation of Scheme

When the works are complete, and within 6 months of final payment for the works, a reconciliation of the scheme costs will be prepared for signing by the Chief Executive Officer and include the following:

- That the works are complete and the costs finalised and;
- A comparison of estimated budget and final costs and;
- Where any variation has occurred, the details of such variation and;
- Final apportioned liabilities.

If cost variations are equal to or greater than 10% then public notice is required to be given and affected persons may make a submission with consequential review rights to the VCAT.

Payment for Scheme

Payment notifications together with an instalment notice will be sent to all contributors advising of final costs.

Contributors can pay their charge in one lump sum, or in quarterly instalments over a specified period of no less than 4 years. Council may, at its discretion, allow instalments to be paid over a ten year period.

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Where a resident chooses to pay their apportioned cost by way of instalments, interest (in arrears) will apply at a rate no greater than that published in accordance with section 172 of the Local Government Act 1989. Interest on late payments will be charged under the *Penalty Interest Act 1983*.

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.

6. Related Policies, Strategies and Legislation

- Local Government Act, 1989
- Ministerial Guidelines September 2004
- Murrindindi Shire Council Procurement Policy
- Infrastructure Design Manual
- Asset Management Policy

7. Council Plan

This item relates to the Council Plan 2017-2021 strategic objective under Our Promise to 'maintain Council's financial sustainability through sound financial and asset management'.

8. Management and Review

The Director Assets & Development will oversee the implementation of this policy.

Manager Community Assets will review this policy in September 2022.

9. Consultation

Consultation will be undertaken with property owners included in a proposed scheme. Many proposals will only be implemented if they have significant support of property owners.

The extent of consultation will depend on the size and/or likely impact of the proposed works, generally in accordance with the following:

All consultation will, at a minimum, be in accordance with the requirements of the Act.

- For small projects that have demonstrated community support and/or are of limited complexity, consultation shall be undertaken in accordance with the Act.
- For larger more complex projects, or for projects in which community support is yet to be ascertained, consultation may commence with:
 - A meeting/s with beneficiaries prior to declaration of a special scheme; and
 - A survey seeking written response from beneficiaries.

If the process for implementing the scheme continues, consultation is undertaken in accordance with the requirements of the Act.

10. Human Rights Charter

This policy has been developed with consideration of the requirements under the Charter of Human Rights and Responsibilities.