



Special Charge Scheme Policy

Whitehorse City Council

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PURPOSE

1 Strategic and Procedural Framework

To provide a strategic and procedural framework to assist Council in establishing Special Charge Schemes for infrastructure projects pursuant to Section 163 of the Local Government Act 1989 (the Act).

OBJECTIVES

2 Consideration of Relevant Circumstances

To ensure all relevant circumstances are properly defined, considered and taken into account when Special Charge Schemes are reported to Council for adoption.

3 Community Participation and Consultation

To ensure fair, reasonable and consistent practices are followed to maximise opportunities for community participation and consultation in relation to Special Charge Schemes.

4 Fair Imposition of Charges

To ensure fairness and equity in the 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 Special Charge Schemes.

5 Efficient Use of Council Resources

To ensure the resources of Council are used to best meet the needs of the local community.

6 Legislative Compliance

To ensure compliance with the requirements of the Act in relation to the performance of the functions of Council and the exercise of its powers in connection with the declaring and levying of Special Charges.

7 Transparent and Accountable Decisions

To ensure transparency, accountability and consistency in Council decision making.

SCOPE

8 Policy Applies to all Schemes

This policy applies to Special Charge Scheme infrastructure projects, including the installation of new easement drains, the construction of new or previously formed but unconstructed roads and footpaths, and the replacement of overhead power lines with underground power lines, or the aerial bundling of overhead power lines.

INTERPRETATION

9 Special Charge and Rate Schemes

In this policy, a reference to a 'Special Charge Scheme' or a 'Special Charge' includes, where the circumstances so require, a reference to a 'Special Rate Scheme' and a 'Special Rate' or a combination of both.

POLICY

10 Scheme Initiation

A Special Charge Scheme may be initiated in a number of ways:

- As a consequence of Council's adopted Program for the Prioritised Improvement of Unconstructed Roads within the City. Under this program, Council has resolved to prioritise the construction of presently formed but unconstructed streets. This will involve consultation with relevant property owners and occupiers to determine whether or not there

is a sufficient level of support to implement a Special Charge Scheme. Subject to sufficient support, the relevant road or roads can then be constructed to a suitable and safe standard in accordance with the requirements of Council; or

- Where special circumstances present themselves and it is considered necessary – normally in the interests of public health and safety – to investigate and proceed with the installation of easement drains within the City; or
- Where Council itself, members of the public, residents, Council Officers or external statutory service authorities request Council to make infrastructure improvements in a particular area. In these instances there must, in most cases, be a demonstration of at least majority support by potential contributors to the Special Charge Scheme.

If Council is or will be required to contribute to the Special Charge Scheme, then the timing of the project will be dependent on sufficient funds being available in the then current or future Capital Works Budget.

It is policy that 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. In particular, this policy is intended to provide an indication only as to how, in most cases, Council will decide to exercise its power in relation to the declaration of a Special Charge, reserving to Council the right to decide to exercise its power in some different way having regard to the circumstances of a particular proposal.

11 Preliminary (Informal) Consultation

Following a request to initiate a Special Charge Scheme, a process of preliminary consultation with affected residents and other stakeholders will commence. This will involve sending preliminary information and an initial questionnaire to all potential contributors with a view to providing and/or seeking:

- information and/or comment on the power of Council to declare a Special Charge Scheme. There are standard Council information brochures already available for 'Street Improvement Schemes', 'Drainage Schemes' and 'Overhead Cables in Residential Streets Schemes';
- an explanation of Council's concerns and the reasons for a Special Charge Scheme and the opportunities for property owners and other stakeholders to contribute to this process before Council proceeds any further;
- an indicative estimated cost based on other schemes, including options for payment.

The initial questionnaire will request property owners to indicate in writing whether or not they support Council undertaking further investigation and development of concept designs and options for presentation back to property owners for the proposed Special Charge Scheme.

12 Preliminary Consultation Assessment

Ordinarily, unless there are special circumstances and subject to Section 163B of the Act, Council will only proceed further with investigating a proposed Special Charge Scheme if it receives written support from at least a majority (more than 50%) of the persons who will be liable to pay the Special Charge.

Council may decide to proceed with a Special Charge Scheme with less than a majority support in accordance with Section 163B of the Act if:

- the levy of the Special Charge Scheme does not exceed two thirds of the total cost. In this case, Council would normally need to contribute at least one third of the total cost; or

- a drainage Special Charge Scheme is required for reasons of public health.

The decision to proceed or not proceed to the next stage, detailed in clause 13 below, will be made by the Manager Engineering and Environmental Services in consultation with Ward Councillors.

If there is not at least majority support or if Council decides not to proceed with a proposed Special Charge Scheme then the property owners and other stakeholders must be advised.

13 Detailed Scheme Preparation including Further Consultation

Following a decision to proceed further with the preparation of a Special Charge Scheme, detailed designs, specifications, construction standards, estimates and apportionments will be prepared by Council staff. This will be done with a high level of further consultation with persons to be affected by the proposal.

The further consultation must commence by sending a letter to all persons likely to be affected by the proposal, which must include:

- reference to how the investigations have been initiated;
- an explanation of the basic principles of the scheme and the future steps leading to its finalisation;
- the name of the Council Officer for contact in relation to individual enquiries;
- concept options and associated preliminary estimates;
- an indication of cost to potential contributors; and
- advice that a public meeting may be called to discuss designs.

A further questionnaire will request property owners to indicate, in writing, whether they would support Council formally giving notice of its intention to declare the Special Charge Scheme, while understanding that formal comment on the Scheme will be invited as part of the formal process and opportunity to be formally heard will be provided.

14 Apportionment Principles

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.

In addition, the following requirements must also be taken into account in determining the basis on which apportionment of the Special Charge amongst those persons who are liable to pay the Special Charge will be determined:

- 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.
- in the case of typical road construction, the full cost of the work is to be charged to all property owners who it is considered will receive a special benefit. The apportionment of costs amongst property owners liable to pay the Special Charge will ordinarily (but not always) be based on a combination of benefit (as to 75%) and area (as to 25%). All properties that enjoy a direct frontage to the road being constructed are to be allocated one (1) benefit unit and properties such as corner properties or

others which do not enjoy a direct frontage to the road will ordinarily be allocated half (0.5) a benefit unit. Area will be 'actual area', although in some cases Council may take into account modified area, which can involve the subdivision potential of the land.

- in the case of other typical schemes to which this policy applies, Council will determine the most reasonable method of distribution of the Special Charge amongst those persons who are liable to pay.

15 Financial Arrangements - General

Property owners must be given the opportunity to pay the Special Charge by either lump sum or instalments over a period of time that is specified by Council.

The length of time for paying by instalments will be dependent on the amount of the Special Charge, which typically for drainage schemes is five (5) years and for road construction schemes ten (10) years.

Unless otherwise decided, Council will not charge interest to cover administration costs associated with persons paying the Special Charge by instalments. However, interest will be charged for late payment in accordance with the Act.

Council may offer a discount for prompt payment to provide a benefit for the ratepayer, without disadvantaging Council.

Ratepayers experiencing difficult financial circumstances may seek relief in accordance with Council's Rating Concessions Policy.

16 Council Report

If the further consultation with affected residents results in there still being broad support for the Special Charge Scheme and an acceptance of preliminary costings and Special Charge contributions, a report will be prepared to Council in which Council is invited to give formal public notice of its intention to declare the Special Charge.

Should Council resolve its intention to declare a Special Charge, public notice and separate notice to persons who will be liable to pay the Special Charge must be given in accordance with the requirements of Sections 163(1A), (1B), (1C), 163A, 163B and 223 of the Act in a newspaper or newspapers that have been chosen by Council and which circulate generally throughout the municipal district.

The report must also indicate the manner in which Council proposes to deal with any submissions it receives under Section 223 of the Act, including the hearing of persons or their representatives who wish to speak in support of the submission.

17 Written Submissions

Written submissions lodged in support of or in opposition to a Special Charge Scheme may request that the submitter be heard in support of their written submission. Persons wishing to be heard may appear before a committee of Council comprising relevant Ward Councillors, the relevant General Manager and other interested Councillors, subject to Council making the appropriate appointment.

After the committee so appointed by Council has heard all submitters, it must produce minutes of the committee meeting and make a recommendation to Council for a final decision by Council.

18 Council Resolution Following Consideration of Submissions

Following a consideration of submissions, including any recommendation of the committee (in the context of a report being before Council on whether or not Council should proceed with the declaration of Special Charge for which public notice has been given), Council may (a precondition of which, however, is a consideration of submissions according to law) resolve to:

- abandon the proposed Special Charge Scheme by not giving effect to the proposed declaration to levy the Special Charge; or

- prepare a new Special Charge Scheme, due to the need to significantly modify the original scheme, thereby requiring the process to be recommenced; or
- proceed, with or without minor variation to the original declaration, to declare the proposed Special Charge.

All persons making submissions and all persons affected by the Special Charge Scheme must be advised of Council's resolution, and the reasons for the decision.

In circumstances where no submissions have been lodged, Council may resolve to proceed to declare the Special Charge.

19 Final Report to Council of Declaration of Special Charge

The final report, which is to be provided to Council, with a recommendation to proceed with the declaration of Special Charge, must include:

- the objectives of the proposal, specifying why the works are considered necessary and who the special beneficiaries will be;
- the detailed design plans defining the scope of the scheme; and
- a recommendation for the use of a Special Charge.

The resolution for Council to declare a Special Charge must include:

- the period for which the Special Charge remains in force;
- the purpose of the Special Charge;
- the wards, groups, uses or areas for which the Special Charge is declared;
- the land in relation to which the Special Charge is declared;
- the criteria which forms the basis of the Special Charge;
- the manner in which the Special Charge will be assessed and levied;
- an estimate of the Special Charge for all property owners. This estimate must include ancillary costs such as survey, design, supervision and administration;
- the impact of the Council's liability to the contribution in the event of over expenditure;
- payment options given to ratepayers;
- details of planning policies and specific objectives (if any) in relation to the scheme works;
- details of the financing provisions to be accommodated by Council in regard to the scheme; and
- any other requirements specified in the Act.

20 Notice of Levy of Special Charge

If Council decides to declare the Special Charge, it must send a Notice of Levy to those persons who are required to pay the Special Charge in accordance with Section 163(4) of the Act. This Notice must comply with the requirements of Section 163(5) of the Act and the Local Government (General) Regulations 2004.

21 Decision Review

A person may apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of a Council decision to impose a Special Charge on that person within 30 days after the date of issue of the Notice of Levy on that person.

Section 185 of the Act sets out the grounds that a person may apply for the decision to be reviewed and the process of the Tribunal review. Section 185AA of the Act also permits a person to apply to VCAT for a declaration of invalidity.

Following notification from VCAT of any appeals lodged, contact may (in appropriate circumstances and whether or not by way of mediation and subject always to the requirements of the Victorian Civil and Administrative Tribunal Act 1998) be made with VCAT applicants in order to determine whether it is feasible or not to conduct negotiations prior to the hearing. Failing this, Council's case is to be prepared for the VCAT hearing, and any required legal representation retained. Council may also choose to engage expert witnesses in appropriate circumstances.

Where VCAT dismisses a Special Charge Scheme application for review and confirms the Special Charge, a letter is to be sent to all relevant owners and occupiers advising of the decision.

Where VCAT upholds the application for review of the Special Charge and quashes the scheme, a report must be prepared to Council in which future options are considered.

Where VCAT upholds the Special Charge Scheme but finds one or more of the applicants for review will not receive a special benefit or whose contributions should otherwise be reduced, a report must be prepared to Council in which it is decided how the resultant financial shortfall in the Special Charge Scheme costs will be addressed.

22 Implementation Process

The implementation of the construction works for the Special Charge Scheme must proceed in accordance with the Procurement and Tendering Policy, as adopted by Council from time to time, and subject to any further direction of Council.

If following completion of works it is ascertained that –

- the actual costs are less than the estimated costs, a reduction which is proportionate to the contributions that will be received by Council must be made to the current owners of the land included in the scheme; and
- the actual costs are more than the estimated costs, then –
 - if the difference is not a material variation, the additional actual costs may in accordance with Section 166(1)(b)(i) of the Act be apportioned amongst the persons who are liable to pay the Special Charge rateably in the same proportions in which the estimated amounts were apportioned or the Council, if it so decides, may pay for the difference between the actual and the estimated costs; and
 - if the difference is a material variation, the Council must exercise its power under Section 166(3)(b) of the Act, or itself pay for the difference between the actual and the estimated costs.

23 Final Reconciliation and Report to Council

A final report is to be prepared for Council immediately upon scheme reconciliation advising:

- that the works are complete and the costs are finalised;
- that the final apportioned costs are presented for adoption by Council; and
- the details of any variation between the original estimate and the final apportioned cost.

Subject to clause 22 and clause 23, following the calculation of final costings in relation to the Special Charge Scheme based on the actual cost of the works, a Final Notice of Special Charge Liability must be served on all contributors, indicating all the relevant scheme details and costs and the amount for which each contributor is finally liable.

RELATED LEGISLATION AND POLICIES

24 Incorporated Policies

The following legislation and policies are relevant to this policy:

Local Government Act 1989

Local Government (General) Regulations 2004

Ministerial Guidelines made under Section 163(2C) of the Act

State Concessions Act 2004

Whitehorse City Council –

- Strategy For Unconstructed Street Council Report dated October 1998
- Status Report On The Strategy For Unconstructed Streets Council Report dated 6 December 1999
- Special Charge Scheme – Payment Options Council Report dated 16 September 2002
- Rating Concession Policy dated 31 December 2002
- Procurement and Tendering Policy dated November 2004

RESPONSIBILITY

25 Responsible Officer

General Manager City Development

REVIEW

26 Requirement to Review Policy

This policy is to be reviewed no later than 18 June 2010.