

# Council Policy

<b>Council policy title:</b>	<b>Special Rate and Special Charge Policy 2022</b>
<b>Council policy sponsor:</b>	Director Environment, Recreation and Infrastructure
<b>Adopted by:</b>	Bayside City Council
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## 1 Policy intent

The purpose of this Policy is to provide a strategic framework for the provision of additional necessary infrastructure via a process which enables costs to be recovered from benefiting parties in a fair and equitable manner.

Under the provisions of Section 163 of the *Local Government Act 1989*, Council has the power to raise funds for works that are of special benefit to properties within the Municipality. Where Council determines that improvement to existing infrastructure is necessary in order to improve the public amenity and to ensure the safety and wellbeing of the community, it may declare and levy special rates and charges.

## 2 Policy purpose

Council uses its powers under the *Planning and Environment Act 1987* and the *Subdivision Act 1989* to require developers to provide the infrastructure needed in new estates. These costs are included in the land sale price. However, Council cannot retrospectively apply these powers to land that was subdivided in the past without the current standard of infrastructure.

Council recognises it does not have the financial resources to fully fund the upgrade of all existing infrastructure to current standards. Council considers that infrastructure improvements can provide special benefits to abutting properties. These benefits can include improvements in amenity, access, safety or economic benefits such as increased land value.

It is essential Council recognises the importance in prioritising when identified key Council outcomes can be delivered in association with various Council projects, such as projects relating to public open space and the general road/street network.

## 3 Glossary – Definitions and Abbreviations

<b>Term</b>	<b>Meaning</b>
Act	Local Government Act 1989
Benefit Ratio	The costs to be incurred are required to be fairly divided proportionately to the benefits received. Those included in the scheme and levied shall only be required to meet their fair share of the costs based on the relative proportion of special benefit they receive.
Council	means Bayside City Council, being a body corporate constituted as a municipal Council under the <i>Local Government Act 1989</i> .
Councillors	means the individuals holding the office of a member of Bayside City Council.
Council officer	means the Chief Executive Officer and staff of Council appointed by the Chief Executive Officer.
Four Year Capital Works Forward Plan	Outlines the infrastructure programs and projects planned for delivery over the next four years by Council.
Majority Support	The requirement for 80% of affected property owners to be willing to enter into a Special Rates and Special Charges scheme.
Ministerial Guidelines	Special Rates and Charges Ministerial Guideline 2004
Occupiers	where the occupier is responsible for the rates.
Policy	Special Rate and Charge Policy
Scheme	Refers to a special rate or special charge scheme
Special benefit	A work or service is of Special Benefit to land and consequently the owners of that land where: <ul style="list-style-type: none"> <li>– No other portion of the municipal district derives a benefit from that work; or</li> <li>– the benefit derived by the selected portion of the municipal district is in addition to or greater than that derived by other properties not included in the selected ('scheme') area.</li> </ul>
Total Levy	Total Levy is the amount in aggregate to be contributed by persons liable for the special rate or charge.
VCAT	Victorian Civil and Administrative Tribunal

#### 4 Scope

This policy applies to special charge schemes used to fund the construction of infrastructure works. The policy applies when the proposed works would provide specific properties with special benefits that are additional to or greater than the general benefits provided to other properties in the municipality.

#### 5 Policy Statement

This policy applies to Special Rate and Special Charge Scheme infrastructure projects, including but not limited to, the installation of new easement drains, the construction of new or previously formed but unconstructed roads and footpaths, the replacement of overhead power lines with underground power lines, or the aerial bundling of overhead power lines and any other category of infrastructure that meets the Special Benefit criteria.

## **6 Scheme Initiation**

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

- As a consequence of Council's Four-Year Capital works Program. Prioritisation can also include roads identified for possible discontinuation. This will involve consultation with relevant property owners and occupiers to determine whether there is a sufficient level of support to implement a Special Rate and Special Charge. Subject to sufficient support, the relevant road or roads can then be constructed or discontinued, 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 municipality; 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 80% support, being the majority by potential contributors to the Special Rate and Special Charge Scheme.

If Council is or will be required to contribute to the Special Rate and 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 Rate and/or Special Charge and to contribute to a Special Rate and 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.

## **7 Preliminary (Informal) Consultation**

Following a request to initiate a Special Rate and 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 Rate and Special Charge Scheme.
- An explanation of Council's concerns and the reasons for a Special Rate and 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 they support Council undertaking further investigation and development of concept designs and options for presentation back to property owners for the proposed Special Rate and Special Charge Scheme.

## **8 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 of the persons who will be liable to pay the Special Rate and/or Special Charge. Council would require a minimum level of 80% approval rates from affected property owners to proceed with a Special Charge Scheme which is classified as the majority within this policy.

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

- The levy of the Special Rate and 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 Rate and Special Charge Scheme is required for reasons of public health.

The decision to proceed or not proceed to the next stage, will be made by the relevant Director. If there is not at least 80% 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.

### **9 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.

### **10 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 consider 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.

### **11 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 Financial Hardship Policy.

### **12 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.



### **13 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 three Councillors, the relevant Director 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.

### **14 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 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.

### **15 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.

## **16 Notice of Levy of Special Charge**

If Council decides to declare the Special Charge, it must then 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.

## **17 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 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.

## **18 Implementation Process**

The implementation of the construction works for the Special Rate and Special Charge Scheme must proceed in accordance with Council's Procurement 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.

## **19 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.

## **20 Financial Hardship**

Council shall as far as practicable provide opportunity for members of the community facing personal or family circumstances that warrant special consideration to meet their obligations as property owners without prejudicing continued occupation of their principal place of residence. Refer to [Financial Hardship Policy](#)

## **21 Monitoring and reporting**

- Council will ensure accountability by reporting annually on the SRSC projects identified within Councils Four Year Capital Works Plan.
- This Policy will be reviewed every four years and/or prior to each four-year capital plan, to ensure it remains effective.

## **22 Roles and responsibilities**

- Director Environment, Recreation and Infrastructure has accountability to give effect to this policy by consideration of SRSC projects being included within the Four Year Capital Works Plans.
- Depending on the nature of projects brought to the attention of Council, the appropriate Manager is responsible for the deployment of the policy in the delivery of required project.

## **23 Associated Council documents and External References**



<b>Legislation</b>	<a href="#">Local Government Act 1989 and amendments</a> <a href="#">Planning and Environment Act 1987</a> <a href="#">Subdivision Act 1989</a>
<b>Policies</b>	<a href="#">Sustainable Building and Infrastructure Policy</a> <a href="#">Procurement Policy 2021-2025</a> <a href="#">Financial Hardship Policy</a> <a href="#">Community and Stakeholder Engagement Policy 2021</a>
<b>Strategies/Plans</b>	<a href="#">Climate Emergency Action Plan 2020-25</a> <a href="#">Environmental Sustainability Framework</a> <a href="#">Revenue and Rating Plan 2021-2025</a>
<b>Procedures/Processes</b>	<a href="#">Budget Preparation Guidelines</a> (Internal)
<b>Other</b>	<a href="#">Ministerial Guidelines 2004</a>

**Please note:** This policy is current as at the date of approval. Refer to Council's website ([www.bayside.vic.gov.au](http://www.bayside.vic.gov.au)) to ensure this is the latest version.