



## **Special Rate and Special Charge Policy and Guidelines**

28 June 2024

## **Acknowledgement of country**

Nillumbik Shire Council respectfully acknowledges the Wurundjeri Woi-wurrung people as the Traditional Owners of the Country on which Nillumbik is located, and we value the significance of the Wurundjeri people's history as essential to the unique character of the shire. We pay tribute to all First Nations People living in Nillumbik, give respect to Elders past, present and future, and extend that respect to all First Nations People.

We respect the enduring strength of the Wurundjeri Woi-wurrung and acknowledge the ongoing impacts of past trauma and injustices from colonial invasion, massacres and genocide committed against First Nations People. We acknowledge that sovereignty was never ceded.

Wurundjeri Woi-wurrung people hold a deep and ongoing connection to this place. We value the distinctive place of our First Nations People in both Nillumbik and Australia's identity; from their cultural heritage and care of the land and waterways, to their ongoing contributions in many fields including academia, agriculture, art, economics, law, sport and politics.

## **Access, equity and inclusion statement**

Nillumbik Shire Council is committed to creating a fair, equitable and inclusive community where human rights are respected, participation is facilitated, barriers are reduced and diversity is celebrated. We support the rights of all people regardless of age, gender, ability or background. We value the diverse and changing nature of our community and understand that some groups and individuals experience more barriers than others.

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# 1 INTRODUCTION

## Glossary of Terms:

“Act”	Local Government Act 1989
“Council”	Nillumbik Shire Council
“Ministerial Guidelines”	Special Rates and Charges Ministerial Guideline 2004
“Policy”	Special Rate and Special Charge Policy and Guidelines
“Scheme”	a Special Rate or Special Charge Scheme carried out under the provisions of the Local Government Act 1989
“VCAT”	Victorian Civil and Administrative Tribunal

## 1.1 Purpose

This Policy recognises the need to achieve the best value of funds allocated by Council and property owners towards infrastructure improvement works. The Policy has a focus of ensuring that a fair, reasonable and consistent approach is applied in the development and implementation by Council of a Special Rate or Special Charge Scheme in accordance with the Local Government Act 1989 (the Act).

The Policy is structured having regard to the requirements of the Act, associated Ministerial Guideline, and past decisions of VCAT in relation to proposals for a Special Rate and/or Special Charge.

## 1.2 Objectives

The objectives of this Policy are:

- To work in partnership with property owners to improve Council’s infrastructure through the implementation of property owner funded Schemes to enhance property access and amenity and protect neighbourhood character.
- To ensure fairness, reasonableness and consistency occurs through the development and implementation of a Special Rate or Special Charge Scheme.
- To ensure that Special Rate or Special Charge Schemes effectively respond to the needs of the community.
- To encourage community participation in relation to Special Rate and Special Charge Schemes.
- To efficiently allocate Council resources in the investigation and development of Special Rate and Special Charge Schemes.
- To ensure compliance with the requirements of the Local Government Act 1989, and Special Rates and Charges Ministerial Guideline 2004.

### **1.3 Scope**

The scope of this Policy is to provide a strategic and procedural framework to guide Council in the implementation of Special Rate or Special Charge Schemes for infrastructure improvement works. The framework of the Policy can also be utilised to guide Schemes for other initiatives such as marketing and promotion schemes for local township groups.

A Special Rate is rarely expected to be used for infrastructure improvements, and therefore the focus of this Policy is for Special Charges. The Policy however has the ability for a Special Rate to apply in place of a Special Charge if required.

The Policy provides direction for involving property owners that will receive a Special Benefit from particular works or services in contributing towards the cost of those works or services.

The Policy covers key aspects of the Scheme process, including community engagement, design standards, guidelines for apportionment of costs and Council contributions towards proposals.

The Scheme process is summarised in Appendix 1, with details associated with each stage of the process described in Sections 2 to 5 and Appendices 2 to 4.

### **1.4 Legislative Context**

The 'Special Rate and Special Charge' legislation, as outlined primarily under Section 163 and associated Sections of the Local Government Act 1989 (the Act), enables a Council to recover the cost of works or services and any associated financing costs from property owners receiving a special benefit from those works or services.

### **1.5 Related Legislation**

Council acknowledges the legal responsibility to comply with the *Charter of Human Rights and Responsibilities Act 2006*, the *Equal Opportunity Act 2010* and the *Gender Equality Act 2020*. The *Charter of Human Rights and Responsibilities Act 2006* is designed to protect the fundamental rights and freedoms of citizens. The Charter gives legal protection to 20 fundamental rights under four key values that include freedom, respect, equality and dignity.

It is considered that this Policy does not adversely impact any rights identified in these Acts.

## **1.6 Related Council Policies**

Council's Community Engagement Policy 2021 provides a commitment to the community that engagement will be centred around the core objectives of Transparency, Timeliness, Simplicity and Opportunity. Any engagement in relation to the outcomes and directions of this Policy will be undertaken in accordance with Council's Community Engagement Policy 2021.

Council's Unsealed Roads Improvement Prioritisation Policy 2024 recognises the need to achieve the best value of funds allocated by Council for road sealing and associated improvement works. The policy has a focus of ensuring that a fair, reasonable and consistent approach is adopted in the assessment and prioritisation of unsealed roads for the allocation of funding by Council for improvement.

Council's Financial Hardship Policy 2020 recognises that some ratepayers may from time to time experience financial difficulty, which will vary in its extent and duration depending on individual circumstances. The policy provides guidelines for delegated staff to assist in the process and assessment of applications received for the deferment of rates and charges due to financial hardship.

## **2 SCHEME INVESTIGATION AND CONSULTATION**

### **2.1 Initiation of a Scheme**

Considerable staff time is involved in investigating and developing a proposed Scheme and undertaking consultation with property owners. To ensure that Council's staff resources are utilised effectively, initiation of the investigation and consultation process for a proposed Scheme will require the demonstrated support of property owners.

This support shall be in the form of a petition or joint letter signed by a majority of property owners who would be required to contribute towards the Scheme, acknowledging their responsibility to contribute towards the cost of the Scheme if it were to progress.

To assist property owners wishing to initiate this process, a template petition and preliminary information will be made available by Council.

A proposed Scheme may also be initiated by Council in response to a Council strategy, broader community interest, road and/or drainage management requirements, or an identified risk.

### **2.2 Special Beneficiaries**

Following initiation of the proposed Scheme, Council will identify the properties that will receive a special benefit from the proposed works. These properties will be included in the Scheme and required to pay the special rate or special charge.

A special benefit applies to a property if the proposed works will provide a benefit that is additional to or greater than the benefit to properties remote from the proposed works. Benefits include improved access or safety, and/or improvements in physical or environmental amenity. It is not necessary for the benefit to be used by the property owner/occupier for a special benefit to be attributed to a property.

All properties abutting and/or accessing the road, or section of road, proposed for upgrade will be assessed to determine whether a special benefit applies.

### **2.3 Preliminary Consultation**

An initial letter will be sent to all property owners identified as receiving a special benefit, outlining:

- (a) that Council has received an indication of community interest in the development of a Scheme;
- (b) the nature of the concerns that have led to a Scheme being investigated; and
- (c) what a Scheme is and how it works, including reference to this policy.

The letter will include an initial questionnaire requesting property owners to respond on whether they support or oppose investigation into the Scheme, and to provide any comments they consider relevant.

Results from individual property owners will remain confidential.

For an investigation to progress, 60 percent or more of the rateable properties that would be included in the Scheme must respond in support of the questionnaire. Where questionnaire results indicate support from less than 60 percent of the rateable properties involved, the proposal will not proceed.

If there are any properties for which Council may have a liability, these properties are excluded from the determination of the level of property owner support for the Scheme.

Property owners who do not return the initial questionnaire will be sent a follow-up letter if their response could change the outcome of the initial questionnaire. A nil response to both the original letter and follow up letter will be considered to represent a lack of support to the proposed Scheme.

Results of the questionnaire will be mailed out to all property owners.

## **2.4 Initial Information Session**

Where questionnaire results indicate support from 60 percent or more of the rateable properties, all property owners will be invited to an initial information session.

Council officers will give a presentation on the Special Charge Scheme process along with the background, purpose and objectives of the proposed Scheme and the potential form of road upgrade. Property owners will have the opportunity to ask questions and provide feedback about the proposal.

## **2.5 Concept Design and Preliminary Cost Estimate**

With consideration given to the feedback provided at the initial information session and the standards described in Appendix 3, a concept design and preliminary cost estimate for the proposed works will be developed by Council officers.

The cost estimate will only include the costs associated with the design and construction of the upgrade works. The cost to property owners will not include Council staff costs and any future costs associated with ongoing maintenance of the upgraded road.

A cost apportionment will be prepared in accordance with Section 5.



## **2.6 Formal Consultation**

A letter will be sent to all property owners included in the Scheme, outlining:

- (a) the purpose and objectives of the proposed Scheme;
- (b) the proposed design standards and project scope; and
- (c) an estimated cost range, specifying upper and lower limits, for the property.

The letter will include a formal questionnaire requesting property owners to respond on whether they support or oppose the development of a Scheme, and to provide any comments they consider relevant.

Property owners who do not return the questionnaire will be sent a follow-up letter by registered mail if their response could change the outcome of the questionnaire. A nil response to both the original letter and follow up letter will be considered to represent a lack of support to the proposed Scheme.

Results from individual property owners will remain confidential.

## **2.7 Council Consideration of the Proposed Scheme**

An overview of the proposed Scheme will be reported to a Council meeting, along with the results of the initial and formal questionnaires.

Where the formal questionnaire demonstrates support from 60 percent or more of the rateable properties that would be included in the proposed Scheme, it will be recommended that Council proceed with the development of the proposed Scheme. The development process will involve further property owner consultation, preparation of a detailed design for the proposal and refinement of the cost estimate.

If support for the Scheme is less than 60 percent, it will generally be recommended that Council does not proceed with the Scheme. However, where there is reasonable justification, it may be recommended to proceed with a Scheme where support for the scheme is less than 60 per cent. Aspects that may be taken into consideration when making this recommendation include:

- (a) The extent of property owner support based on the responses and comments to the questionnaires.
- (b) The seriousness of any existing problems (health, loss of amenity, safety concerns, public nuisance, etc.).
- (c) Existing environmental impacts, including dust and impact on water quality.
- (d) The benefits the Scheme would deliver to the property owners directly affected and the broader community.
- (e) The extent of complaints regarding the area.
- (f) The amount, if any, of Council contribution towards the cost of the works.

If there are any properties for which Council may have a liability, these properties are excluded from the determination of the level of property owner support for the Scheme.

## **2.8 Council Resolves Not to Proceed**

Where Council resolves not to proceed with a Scheme, there will be a moratorium of three years on instigating another proposal for the same Scheme or part thereof.

## **3 DESIGN DEVELOPMENT**

### **3.1 Task Group Formation**

Following the resolution of Council to proceed with the development of a Scheme, a letter will be sent to all included property owners, advising:

- (a) that Council has resolved to support the proposed Scheme and to continue with property owner consultation, commencing with the formation of a Task Group;
- (b) that nominations are being sought from property owners, aiming for a balanced representation across the Scheme area, to form a representative Task Group to be involved with further consultation; and
- (c) the process to select the members of a Task Group.

Following the selection of the Task Group, another letter will be sent to all included property owners, which will include:

- (a) the names and contact details of the Task Group members; and
- (b) an invitation for owners to nominate issues and concerns that they would like addressed through the Scheme.

The Task Group will work with Council officers to develop a design for the works of the Scheme. The Task Group is also responsible for consulting with other property owners in the Scheme, as described in Appendix 4.

### **3.2 Task Group Meetings**

Council officers will develop the design for the Scheme in consultation with the Task Group, over the course of one to two separate meetings, giving consideration to comments received from property owners and road design standards and guidelines.

One of the meetings with the Task Group will be held on-site, so that officers can understand local issues and explain how the design will affect the area. Further Task Group meetings may be scheduled, as required.

### **3.3 Design Activities**

Council officers will prepare a detailed design and cost estimate for the proposed works. Various investigations and activities will be undertaken to support the design, including feature survey and where necessary arborist and other specialist assessments.

### **3.4 Final Information Session**

At the completion of the Task Group process, an invitation to a Final Information Session will be sent to all included property owners, where:

- (a) draft design plans will be presented to property owners; and
- (b) the continuation of the Scheme process will be explained.

Comments from property owners at the Final Information Session will be considered during the preparation of the final design plans by Council officers.

## **4 STATUTORY PROCESS AND CONSTRUCTION**

### **4.1 Introduction**

The process for declaring, levying and varying the Special Rate or Special Charge must be undertaken in accordance with the requirements of the Local Government Act 1989. The process is described in more detail in Appendix 2.

### **4.2 Resolution to Give Notice of Intention to Declare**

After the Final Information Session, a report will be prepared to Council, recommending that Council give notice of its intention to declare a Special Rate or Special Charge in accordance with the requirements of Section 163 of the Local Government Act 1989 (the Act).

### **4.3 Public Notification and Property Owner Notification**

Council must give public notice of its intention to declare a Special Rate or Special Charge at least 28 days before making the formal declaration. A public notice will be placed in the 'The Age' or 'Herald Sun' newspaper and in the 'Public Notices' section of Council's website, advising of the Special Charge Scheme.

All property owners liable to pay the Special Rate or Special Charge will also be notified.

### **4.4 Consideration of Submissions**

Council or a Committee of Council will consider all submissions made under Section 223 of the Local Government Act 1989 in relation to the intention to declare. Anyone who has made a submission must be given the opportunity to address the Council or Committee in support of their submission.

### **4.5 Formal Declaration**

After the submissions have been considered, a report will be provided to Council outlining any alterations made in response to the submissions. Council will then determine whether to declare or abandon the Scheme.

### **4.6 Levy the Special Rate or Special Charge**

The Special Rate or Special Charge will be levied by sending a notice to all property owners who are liable to pay the levy. This notice will be sent to property owners within 12 months of the date of declaration of the Scheme by Council.

#### **4.7 VCAT Appeal Period and Council Consideration of VCAT Determination**

Property owners have 30 days from the date of the above notice to appeal to VCAT. After the 30 day period has passed, officers will make contact with VCAT to determine whether an appeal has been lodged.

All property owners will be updated as to whether or not an appeal has been lodged with VCAT and the anticipated timeframe(s) on the progress of the Scheme.

If an appeal has been lodged and the matter is to be referred to VCAT for review, the outcome of the VCAT hearing will be reported to Council. If Council considers that the VCAT imposed conditions render the Scheme unviable it may resolve to abandon the Scheme. All property owners will be updated of the VCAT determination and any Council resolution resulting from consideration of the report.

#### **4.8 Commence Construction Works and Issue Invoice for Payment**

If the Scheme is to proceed, an invoice for payment will be sent to the person(s) liable to pay, generally at the time of commencement of construction of the works.

##### **4.8.1 Payment Options**

The Special Rate or Special Charge is to be paid in either of the following ways:

- (a) Payment in full as a lump sum, or
- (b) By way of an instalment plan with payments made Quarterly. The length of the instalment period will be determined by the value of the average levy amount with a minimum period of four years made available for payments and a maximum of 15 years. Generally ten years will be made available for the instalment period.

##### **4.8.2 Interest on an Instalment Plan**

Paying by instalments will accrue interest which will be calculated at a fixed rate for the term of the Special Rate or Special Charge.

- (a) The interest rate to be charged will be equivalent to the estimated borrowing costs of Council, plus a 1 per cent administration fee for Council to administer the loan over the instalment period.
- (b) Where Council is to borrow to fund the proposed Special Rate or Charge Scheme, the interest rate to be charged will be determined on advice from Council's financial institution based upon current fixed rates for the period of the loan.
- (c) Where Council intends to fund the proposed Special Rate or Charge Scheme from its cash reserves, the interest rate will be determined utilising the Victorian State Government Department of Treasury and Finance "indicative borrowing rate for Local Governments".

- (d) Interest on late payments will be charged as set by the Minister for Local Government by notice published in the Government Gazette. Interest will not be charged on any component of an unpaid amount that is interest already charged.

### **4.8.3 Financial Hardship**

Where a person is financially unable to make the required payment(s), they may apply for assistance in accordance with Council's Financial Hardship Policy.

## **4.9 Completion of Works / Variation of Special Rate or Special Charge**

After the construction works and defects liability period are complete, a final report to Council certifying completion of all necessary works and including a final cost apportionment will occur.

At this stage all costs are known and Council may vary the Special Rate or Special Charge to recover the actual cost of the Scheme in accordance with Section 166 of the Act.

A final cost statement will be issued to all current property owners, and where savings have been achieved these will be distributed to current property owners in accordance with the framework for the initial apportionment of costs.

## **5 APPORTIONMENT OF COSTS**

### **5.1 Complexities of Schemes**

In preparing the apportionment of costs for the properties involved in a Scheme there will often be complexities that may require variation to the principles described below. With proper consideration and justification, flexibility will be applied to ensure that a fair and reasonable distribution of costs occurs. Should there be a variation to the principles below, this will be described in reporting to Council on a scheme-by-scheme basis.

### **5.2 Apportionment of Costs to Property Owners**

In determining the apportionment of costs for properties involved in a Scheme, Council may consider aspects such as the nature of benefit, nature of property abuttal (front, side or rear), property dimensions, current Nillumbik Planning Scheme, existing and potential use of a property, and other criteria that may be considered relevant.

For road improvement Schemes, properties will generally be attributed 75 percent of the charge based upon Access Benefit Unit plus 25 percent of the charge based upon Amenity Benefit Unit as described below.

For drainage improvement Schemes, the charge to properties will generally be based upon the area of the property within the catchment benefitting from the works. Other factors may be considered to ensure a fair and reasonable distribution of costs.

For footpath and kerb and channel Schemes, generally the same methodology as used for road improvement Schemes will be utilised.

### **5.3 Access Benefit Unit**

A property derives 'special benefit' through having adjacent road infrastructure improved. This benefit includes property access improvements associated with ride quality, road safety and vehicle operating costs.

This benefit is generally related to the use of the property and its interaction and reliance on the road to be upgraded in the Scheme, rather than the dimensions of the property. This benefit effects all properties regardless of property dimensions and 75 per cent of the total cost of infrastructure improvement is apportioned on this basis.

The concept of Access Benefit Unit is used, as follows:

- Residential properties whether developed or otherwise, to which direct vehicle access may reasonably be obtained by means of the road to be constructed in the Scheme will be apportioned one (1) Access Benefit Unit, where primary vehicle access and building orientation is identified to be aligned with the road being constructed.



- Residential properties whether developed or otherwise that do not front the road and have a side and/or rear boundary abuttal to the Scheme will be apportioned 0.1, 0.3 or 0.5 of an Access Benefit Unit, considering the form and use of any existing access to the road, the likelihood and difficulty of providing an access in the future, and the potential form and use of any future access. For example, a property that has an existing access to the road that has some existing or potential future use will be apportioned 0.5 of an Access Benefit Unit. Whereas a property without an existing access to the road and with an access to another road, and that would require significant earthworks and/or tree removal to create an access to the road to be upgraded will be apportioned 0.1 Access Benefit Unit.
- Properties with multiple abuttals will be apportioned based on one abuttal only, whichever results in the greater portion of an Access Benefit Unit. For example, residential properties with front and side abuttals will be apportioned one (1) Access Benefit Unit.
- Multi-unit development and dual occupancies (attached) that have a frontage to the Scheme will be apportioned 0.6 of an Access Benefit Unit for each unit/occupancy, with reductions for side and rear abuttals as described above.
- Residential properties that are rated twice, such as due to having a second dwelling or small second dwelling, will be apportioned one additional Access Benefit Unit or an additional portion of an Access Benefit Unit, depending on the size and form of the development and considering the principles described above.
- Bed and Breakfast (B&B) establishments will be apportioned an additional portion of an Access Benefit Unit, considering the size and form of the development and its interaction and reliance on the road to be constructed in the Scheme.
- Where a portion of the property abuts a road that has previously been sealed or the proposed upgrade works do not extend for the full length of the property abuttal, then a pro rata Access Benefit Unit will be allocated to the property based upon the proportion of the property abutting the road to be upgraded. This principle will not apply to a property at the end of a no through road.
- Properties considered to have subdivisional potential in accordance with Council's Planning Scheme may be allocated an additional Access Benefit Unit for each additional allotment that could be established along the road to be constructed in the Scheme. An assessment will be carried out to determine whether there are practical limitations to this occurring such as the need to demolish an established dwelling, or terrain or vegetation constraints.
- Commercial, retail, industrial, community and other non-residential properties may be used more or less intensely than residential properties and will have a specific assessment carried out to determine the comparative special benefit that should apply. The assessment shall consider the volume of traffic generated by the development and any other relevant factors, and allocate a fair and reasonable number or portion of Access Benefit Units to each of these properties. For example, a property that generates twice as much traffic as a residential property fronting the road may be apportioned two (2) Access Benefit Units.

## **5.4 Amenity Benefit Unit**

The environmental and amenity benefits that a property receives from infrastructure improvements varies with the dimensions of the property and the exposure that it has to a road. For example, a property with a long frontage has more exposure to the dust problem from a gravel road than a property with a short frontage, and is therefore considered to receive more benefit from sealing of the road.

The remaining 25 per cent of the total cost of infrastructure improvement is apportioned on this basis of the length of abuttal to the road.

The concept of Amenity Benefit Unit is as follows:

- Properties with a frontage to the Scheme will be apportioned one (1) Amenity Benefit Unit per metre of frontage for that property.
- Properties with a side boundary abuttal to the Scheme will be apportioned one half (0.5) Amenity Benefit Unit per metre of side boundary abuttal for that property.
- Properties with a rear boundary abuttal to the Scheme will be apportioned one third (0.33) of an Amenity Benefit Unit per metre of rear boundary abuttal for that property.

## **5.5 Council Contributions**

### **5.5.1 Council Land**

Council-owned land within the Scheme area will attract a liability in accordance with Sections 5.1 to 5.4 of this Policy. Council (as the landowner) shall be responsible for this liability. This does not include land designated as road reserve.

### **5.5.2 Crown Land**

Crown Land is exempt from participating in a Scheme for street construction under Section 221(3) of the Act. Council will take responsibility for the liability of any land that is exempt from Schemes. This liability shall be in accordance with Sections 5.1 to 5.4 of this Policy.

### **5.5.3 Community Benefit**

Council will make a contribution for 'community benefit' where the Scheme will provide tangible and direct benefits to people in the broader community, other than those properties involved directly in the Scheme.

Broader community benefit from infrastructure improvement works will be assessed from a comparison of local traffic use (by properties abutting the road) to through traffic use (by vehicles with no origin or destination along the road). In the case where the Scheme does not extend for the full length of a particular road, all traffic generated by the properties abutting the full length of that road, as well as any traffic from properties in adjoining courts or dead end roads, will be considered to be local traffic.

It will be assumed that each residential dwelling fronting the road generates ten vehicle trips per day. For community, commercial and other non-residential uses abutting the road, a study of the facility will be undertaken to establish trips per day.

A traffic volume assessment will not be undertaken for dead-end, no through roads. All traffic using these roads will be assumed to be local traffic associated with the properties abutting these roads.

A traffic count will be undertaken on through roads over a seven day period during the time of the year expected to correspond to the highest typical volumes.

Where through traffic is calculated to exceed 30 percent of all traffic using an existing road, then Council will consider providing a contribution of 2 percent of the cost of works that landowners would otherwise be apportioned for every 3 percent increase in through traffic volume greater than 30 percent.

In cases where the design standard needs to be increased beyond that of a typical residential road, to cater for existing and/or potential future through traffic, Council will consider a contribution based on the cost differential between the required standard and the standard that would be required solely for local traffic.

In undertaking these assessments, care will be taken to avoid double counting of any benefit or liability.

#### **5.5.4 Direct Financial Contribution**

Council may consider a financial contribution if it wishes to upgrade or replace existing infrastructure within or near the Scheme area, at the same time as the Scheme works. Such a contribution would typically apply to works that provide broader community benefits and/or are not consistent with the purpose of the Scheme.

Council may also consider a financial contribution where it has been determined that the Scheme will provide benefit to those not included in the Scheme.

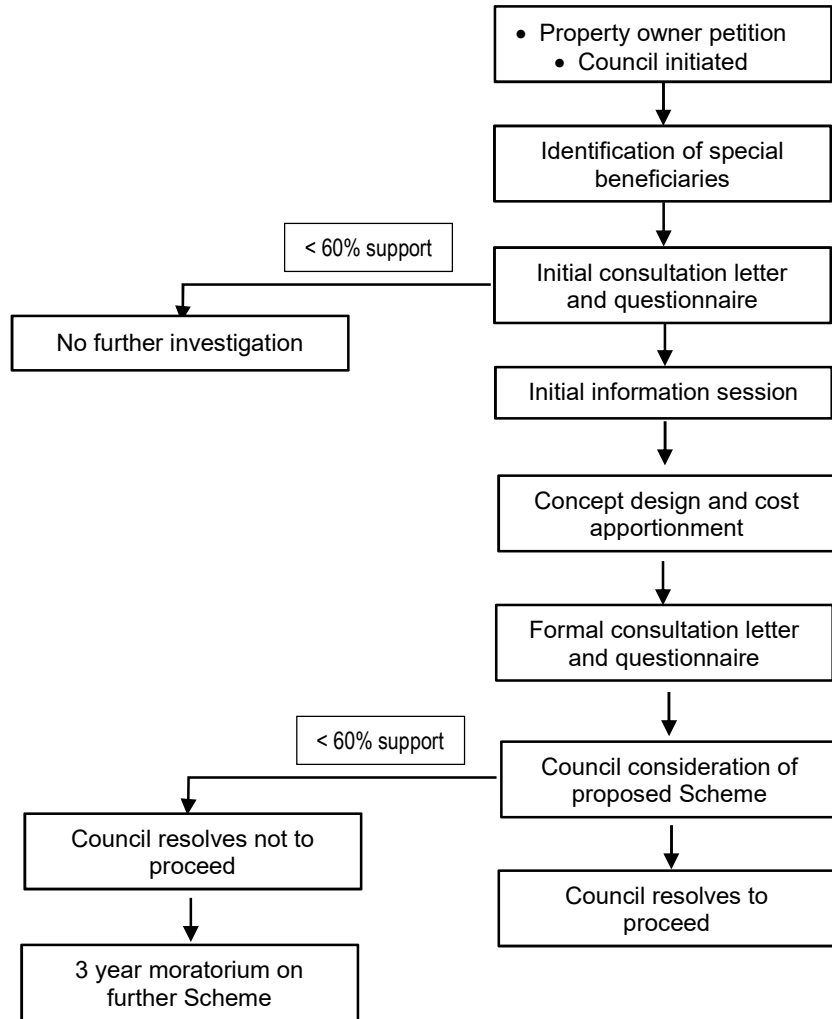
#### **5.5.5 Limits to Council Contributions**

The limit on Council's contribution to a Scheme will not exceed \$1,000 per property involved in the Scheme without specific Council approval. Should the required Council contribution exceed \$10,000 in total, it will need to be considered as part of the Council's Capital Works budget estimates and approval processes.

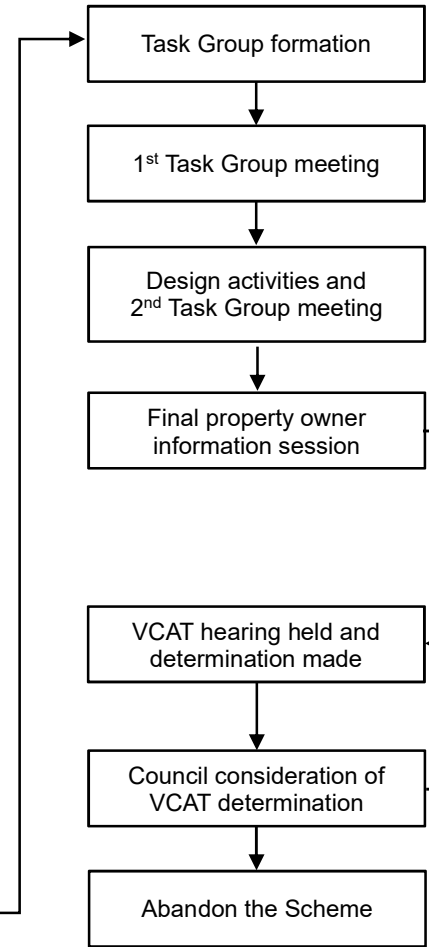
This requirement is to ensure both equity and financial control, and to manage Council's obligations in cases where the contribution required by Council may be an excessive subsidy provided to property owners in the Scheme by the ratepayers of Nillumbik.

# Appendix 1 – SCHEME PROCEDURE

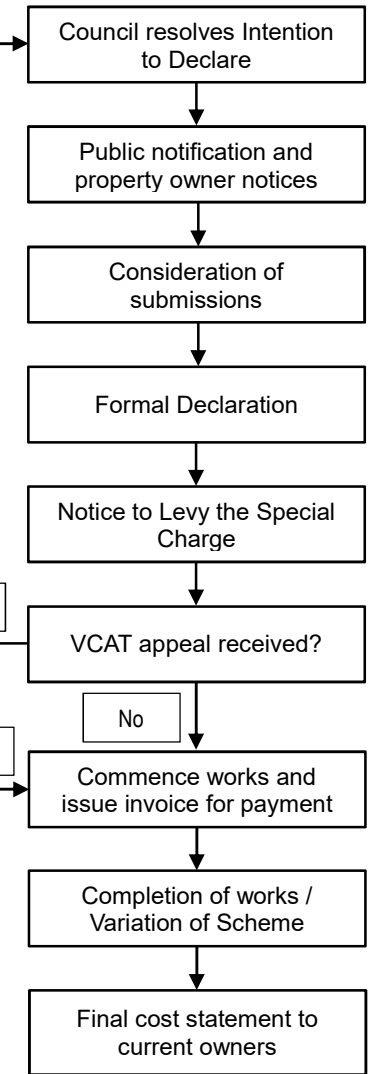
## INVESTIGATION & CONSULTATION



## DESIGN DEVELOPMENT



## STATUTORY PROCESS & CONSTRUCTION



## **Appendix 2 – STATUTORY PROCESS**

### **1 Resolution to Give Notice of Intention to Declare a Special Charge**

After the Final Information Session, a report will be prepared to Council, recommending that Council give notice of its intention to declare a Scheme in accordance with the requirements of Section 163 of the Local Government Act 1989 (the Act).

The report to Council will include:

- (a) A statement of the purpose of the proposed works or services;
- (b) A statement as to whether the proposal is a Special Rate or Special Charge or a combination of both;
- (c) The total amount of the Special Rate or Special Charge to be levied, including the benefit ratio;
- (d) The criteria that forms the basis of the Special Rate or Special Charge, including:
  - the wards, groups, uses or areas involved. For privacy purposes property owner names will not be used in the report to Council.
  - the land (by property description) in relation to which the Special Rate or Special Charge is to be declared.
  - the manner in which the Special Rate or Special Charge will be assessed and levied (the apportionment).
  - details of the period for which the Special Rate or Special Charge remains in force. This will be dependent on financing plan and instalment plan available for repayment.

#### **1.1 Public Notification**

Council must give public notice of its intention to declare a Scheme at least 28 days before making the formal declaration.

A public notice will be placed in the 'The Age' or 'Herald Sun' newspaper and in the 'Public Notices' section of Council's website, advising of the Special Charge Scheme. The notice will be in accordance with Sections 163(1B) and 223 of the Act and:

- (a) outline the proposed declaration;
- (b) set out the date on which it is proposed to make the declaration;
- (c) advise that copies of the proposed declaration are available for inspection at the Council office for at least 28 days after the publication of the notice;

- (d) advise that the proposed declaration will expire if the Special Rate or Special Charge is not levied to each person liable to pay it within 12 months after the day on which the declaration to which the rate or charge relates is made; and
- (e) include a statement that submissions on the proposed Scheme are invited under Section 223 and:
  - i. specify the matter in respect of which the right to make a submission applies;
  - ii. contain the prescribed details in respect of that matter;
  - iii. specify the date by which submissions are to be submitted, being a date which is not less than 28 days after the date on which the public notice is published; and
  - iv. state that a person making a submission is entitled to request in the submission that the person wishes to appear in person, or to be represented by a person specified in the submission, at a meeting to be heard in support of the submission.

The additional objection process outlined in Section 163B of the Act will apply to Schemes where Council will recover more than two thirds of the total cost, unless exempted under Section 163B(2). Under this section, the public notice outlined above must also:

- (a) advise which persons have a right to object to the proposed declaration;
- (b) advise how those persons may object; and
- (c) advise that objections in writing must be lodged with the Council within 28 days of the day on which the public notice is published.

Council cannot proceed to make the proposed declaration if objections are received from the majority of rateable properties.

## **1.2 Property Owner Notification**

Council must send a copy of the above public notice to all persons who will be liable to pay the charge within three working days of the day on which the public notice is published.

## **1.3 Consideration of Submissions**

Council or a Committee of Council will consider all submissions made under Section 223 of the Local Government Act in relation to the intention to declare. Anyone who has made a submission must be given the opportunity to address the Council or Committee in support of their submission.

## 1.4 Formal Declaration

After submissions have been considered, a report will be provided to Council outlining any alterations made in response to the submissions and including a recommendation to declare or abandon the Scheme.

If Council resolves to formally declare the Scheme, it must specify the following in the declaration as required by Section 163(3) of the Act:

- (a) the wards, groups, uses or areas for which the Special Rate or Special Charge is declared; and
- (b) a description of the function to be performed or the power to be exercised; and
- (c) the total cost of the performance of the function or the exercise of the power; and
- (d) the total amount of the Special Rates and Special Charges to be levied; and
- (e) the land in relation to which the Special Rate or Special Charge is declared; and
- (f) the manner in which the special charge will be assessed and levied; and
- (g) details of the period for which the Special Rate or Special Charge remains in force; and
- (h) that the declaration expires if the Special Rate or Special Charge is not levied to each person liable to pay it within 12 months after the day on which the declaration to which the rate or charge relates is made.

Council may also declare that incentives are to be given by it for the payment of the Special Rate or Special Charge before the due date, and must include in the declaration details of the circumstances in which an incentive will be given.

Where land that is non-rateable and not Crown Land is to be included in a Scheme, this will be specified in the declaration by Council in accordance with Section 221(3) of the Act.

To ensure compliance with Section 185 of the Act, the report to Council shall confirm that:

- (a) if Council's 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 consistent with those policies or objectives; and
- (b) if Council's 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 any land are necessary, reasonable, not excessive, sufficient, suitable or not costly, having regard to the locality or environment and to the probable use of the road or drainage of the land.



To ensure compliance with Section 163(7) of the Act, Council shall also be certain that:

- (a) If a private street (within the meaning of section 575(1) of the Local Government Act 1958) is constructed wholly or partly at the cost of the owners or occupiers of any land which abuts or fronts the street, the Council may not at any future time recover any further costs in respect of the construction of a component of the private street if that component has been previously constructed to the satisfaction of the Council from the owners or occupiers of the land under sections 163 or 221 of the Local Government Act 1989 by way of a special rate or special charge, or Division 10 of Part XIX or Part XLII of the Local Government Act 1958.

Council must not make a declaration which has been altered from the proposed declaration specified in the public notice if the effect of the alteration is to increase the liability of any person to pay the Special Rate or Special Charge to be imposed by the proposed declaration unless –

- (a) the alteration is made in response to a submission or objection received by the Council in response to the proposed declaration; and
- (b) the increase in the liability of any person to pay the special rate or special charge does not exceed 10%.

## **1.5 Levy the Special Rate or Special Charge**

Once Council has resolved to formally declare the Scheme, the Special Rate or Special Charge is levied by sending a notice to all property owners who are liable to pay the levy that contains the following information as required by Sections 163(4) and 163(5) of the Act:

- (a) the prescribed information described in the Local Government (General) Regulations 2015, including:
  - the name and address of the person who is liable to pay the rate or charge
  - a description of the land in respect of which the rate or charge is levied
  - the amount for which the person is liable
  - the method of calculating the rate or charge
  - the penalties for failing to pay
  - the manner in which the rate or charge may be paid
  - the rights of the person to apply to VCAT for a review under Section 185 of the Act in relation to a Special Rate or Special Charge
- (b) a statement about when the Special Rate or Special Charge is payable; and
- (c) details of the period for which the Special Rate or Special Charge remains in force.

## **1.6 VCAT Appeal Period**

Property owners have 30 days from the date of the above notice to appeal to VCAT based upon grounds specified in Section 185 of the Act.

After the 30-day period has passed, officers will verify with VCAT whether an appeal has been lodged.

## **1.7 Council Consideration of VCAT Determination**

If an appeal has been lodged and the matter is to be referred to VCAT for review, it will be necessary to wait for VCAT to set a hearing date and undertake their review. The outcome of the VCAT hearing will be reported to Council. If Council considers that the VCAT imposed conditions render the Scheme unviable it may resolve to abandon the Scheme. All property owners will be updated of the VCAT determination and any Council resolution resulting from consideration of the report.

If there are no appeals with VCAT, property owners will be updated and Council will proceed with the declaration of the Scheme.

## **1.8 Commence Works and Issue of Invoice for Payment**

If the Scheme is to proceed, an invoice for payment will be sent to the person(s) liable to pay, generally at the time of commencement of the construction works.

Where a person is financially unable to make the required payment(s), they may apply for assistance in accordance with Council's Financial Hardship Policy.

## **1.9 Completion of Works / Variation of Special Rate or Special Charge**

When the construction works are complete, a final report to Council certifying completion of all necessary works and including a final cost apportionment will occur.

At this stage all costs are known and Council may vary the Special Rate or Special Charge to recover the actual cost of the Scheme in accordance with Section 166 of the Act.

If a variation of a special rate or special charge will result in:

- (a) persons being required to pay a special rate or special charge who were not previously required to do so; or
- (b) an increase equal to or greater than 10% in the amount of the special rate or special charge payable by a person,

then Council must comply with subsections (1A), (1B) and (1C) of Section 163 as if the variation were a declaration, including that a person may make a submission under Section 223.

A final cost statement will be issued to all current property owners, and where savings have been achieved these will be distributed to current property owners in accordance with the framework of the initial apportionment of costs.

## Appendix 3 – INFRASTRUCTURE DESIGN STANDARDS

The design standards for infrastructure improvements, generally undertaken as a Special Charge Scheme, will be mindful of neighbourhood character while providing a suitable solution to the issues of access, safety, drainage, bank erosion and dust that an unsealed road generates.

### Urban Roads

The most commonly used standard of road design in urban areas consists of asphalt pavement, concrete kerb and channel and underground drainage. Existing properties will be connected to the underground stormwater drainage network where appropriate. This standard is similar to that of roads in new subdivisions.

This 'urban' standard of road design is recommended where property sizes are less than 0.4 hectare, on the basis that properties of this size are generally not able to absorb sufficient stormwater within the property.



Figure 1 – Urban Road Construction

### Rural Roads

In rural areas the most common standard of road design consists of the road being sealed along existing widths and alignments, with open table drains. Where required, roads may be widened to improve safety or provide vehicle passing bays.

Stormwater connections to properties are not provided. Where required, open table drains may be sealed to prevent erosion or increase the driveable road width.

Elements of the urban design standard may also be incorporated into sections of a rural road design (e.g. kerb and channel, underground drainage).

Most rural roads are constructed using a sprayed seal. This takes the form of two coats of bitumen and aggregate. The process involves an initial seal followed by a final seal six to twelve months later.

This standard of road design is recommended in areas where the majority of properties are more than 0.4 hectare and are able to absorb sufficient stormwater within the property.

Where existing drainage issues are present in an area, the application of a 'rural' standard of road construction may not address these issues.



Figure 2 – Rural Road Construction

## Design Considerations

In assessing the appropriate design standards in urban and rural areas, Council will consider a number of factors, including:

- Requirements of relevant design standards and guidelines
- Road safety
- CFA access requirements
- Compatibility with the adjacent land use zone
- Size and use of the properties
- Views of property owners
- Topography of the area and proximity of buildings to the road

- Wider impact of the works on the drainage catchment
- Neighbourhood character
- Environmental impacts
- Maintenance requirements
- Impact of the works on other road users (e.g. pedestrians, cyclists, horse riders)

These considerations will be documented in the rationale for the proposed design standards.

### **Road Width**

The absolute minimum recommended seal width to accommodate two-way traffic flow is 5.5m. However, on local access roads with low traffic volumes Council may reduce the seal width to match the existing road formation to minimise impact to native vegetation, and thereby only accommodate one direction of traffic flow at a time. A width greater than 5.5m may be provided around bends or to accommodate vehicle passing opportunities.

Traffic safety and traffic volume will be taken into consideration when determining the appropriate widths along a road.

### **Neighbourhood Character**

The design will be informed by Council's Neighbourhood Character Strategy (December 2023).

To protect neighbourhood character, Schemes are typically designed to accommodate road construction mostly within the existing road formation, and native vegetation is not removed unless it is absolutely necessary or required for safety reasons. It is also noted that a Planning Permit may be required for native vegetation removal.

### **Land Use Zoning**

A 'rural' standard of construction is the general preference for road sealing projects in rural conservation zones and outside the Urban Growth Boundary and Township Zones. The use of concrete kerb and channel will be minimised in the Green Wedge and any proposed use may be coloured to match the colour of the road.

## **Traffic Management Options**

The design proposal may include speed humps, slow points, road narrowing and footpaths, particularly in urban areas. These would assist in controlling traffic speeds and promoting the overall safety of the road. Property owners will be given the opportunity to assist officers in identifying locations for traffic control devices and footpaths, throughout the design process.

## **Extent and Scope of Works**

The extent and scope of works for a road construction Scheme must be acceptable to Council.

To avoid maintenance and safety issues, the following principles will be adopted to determine the extent of a Scheme:

- A Scheme must continue from an existing sealed section of road, unless the Scheme is of significant length (in excess of 1km) or involves the sealing of the entire length of a no-through road.
- A Scheme must extend to the end of the road, nearest intersection and/or a safe and practical end point.
- A Scheme may need to extend a short distance beyond the properties involved for maintenance and/or safety reasons.

## **Appendix 4 – SCHEME TASK GROUP TERMS OF REFERENCE**

### **1 Definition**

A Task Group is a group of property owners that will work with Council officers to ensure that a Scheme achieves the desired outcomes of property owners and Council.

### **2 Aim of the Task Group**

To consider and explore road and drainage improvement options for a proposed Scheme.

To facilitate feedback between Council officers and property owners.

### **3 Role of the Task Group**

To keep all property owners informed of design options and the Scheme process.

To advise on the provision of information to property owners, in line with Council's Community Engagement Policy, as well as to advise when further information may be required from property owners (for example, additional comments forms).

To provide input to the development of road and drainage options for a proposed Scheme, which represent the interests of all property owners involved.

The Task Group has no delegated powers. They may only comment on proposed design options or suggest other design options. The final recommendations for road or drainage improvements shall be determined by Council.

### **4 Membership**

Membership shall typically comprise a maximum of five members, from different properties within a Scheme area.

Where possible the Task Group shall consist of one property owner from each road in the Scheme area, where multiple roads are involved in the proposal. If a representative cannot be found from a road the next closest road may have an additional representative.

Representatives shall nominate in writing in response to a Council request for nominations. A vote may be taken to elect the Task Group.

### **5 Accountability**

The Task Group will present its views and recommendations to all property owners involved in the Scheme.

From time-to-time Council may request reports regarding the progress of the Task Group.



The names and contact details of Task Group members will be made available to all property owners in the Scheme. They can then be contacted for property owner input, information regarding progress of the group, or explanation of options.

## **6 Meetings**

A meeting will be held approximately once every three months, and shall include a site meeting at the start of the design development process. Meetings will be held during normal business hours (i.e. 9am to 5pm, Monday to Friday).

To conduct effective business, it is desirable that the majority of the property owners on the Task Group are in attendance at a Task Group meeting.

Minutes of all meetings will be kept and circulated to Task Group members by Council officers.

## **7 Design Standards**

The improvement options developed by the Task Group must show consideration for relevant standards and guidelines relating to road design, road safety and traffic management.