

# **Special Charge Schemes for Road and Drainage Works Policy & Guidelines**

**Final August 2018**

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## **1.1 Purpose**

To provide a strategic and procedural framework to assist and guide Council in the implementation of Special Charge Schemes for road and drainage works.

## **1.2 Objectives**

- 1 To facilitate the protection of Neighbourhood Character across the Shire
- 2 To ensure fairness, equity and consistency in the application of Special Charges
- 3 To ensure that Special Charge Schemes respond to the needs of the community
- 4 To encourage community participation in relation to Special Charge Schemes
- 5 To efficiently allocate Council resources in the investigation and development of Special Charge Schemes
- 6 To ensure compliance with the requirements of the *Local Government Act 1989*

## **1.3 Scope**

This policy principally covers road and drainage Special Charge Schemes established to undertake improvements to existing road and drainage infrastructure networks identified from time-to-time by elected Councillors, Council officers, or as a result of approaches made to the Council by owners or occupiers.

It is intended that use of the policy be limited to upgrades where the primary beneficiaries of the proposed works are the owners who would be required to contribute and where there is at least 60 per cent support among these owners.

The policy covers the Special Charge Scheme process, the design standards and the guidelines for apportionment of costs.

## **1.4 Legislative Context**

The 'Special Charge Scheme' legislation under Section 163 of the *Local Government Act 1989* (the Act), enables a Council to recover the cost of the works from property owners, for works that will be of special benefit to them.

## 2. INITIATION

### 2.1 Initiation of Scheme

The initiation into the investigation of a Special Charge Scheme can occur as a result of:

1. the receipt of a petition from the majority of property owners who would be required to contribute to the scheme\*;
2. the direction by a Councillor, responding to community interest; or
3. an officer responding to community interest, road or drainage management requirements, or an identified risk, authorised by the Director Sustainability and Place.

\* Refer to **Part 6 - Guidelines for apportionment of costs for road construction**, to determine included property owners.

### 2.2 Preliminary Consultation

An initial letter will be sent to all property owners, outlining:

- 2.2.1 that Council has received an indication of community interest in the development of a Special Charge Scheme;
- 2.2.2 what a Special Charge Scheme is and how it works, including relevant information about the design standards and method of apportionment of the costs; and
- 2.2.3 the nature of the concerns that have led to a Special Charge Scheme being investigated.

The letter will include an initial questionnaire requesting property owners vote on whether or not they support further investigation into the scheme and to provide any comments they consider relevant. A “nil” response will be treated as a ‘no’ vote.

Results from individual property owners will remain confidential.

### 2.3 Public Information Session

Results of the questionnaire are mailed out to property owners. Where the results indicate support from 60 per cent or more of the included properties, all property owners will be invited to a public information session. Where the results indicate support from less than 60 per cent of the properties involved, all property owners will be advised that the proposal has not been successful.

Council officers will give a presentation on Special Charge Schemes and the background and objectives of the current proposal. Based on a preliminary investigation and comments

received from the initial questionnaire, a minimum design standard required to meet the design objectives and the wider risk management objectives, will be outlined.

Property owners will have the opportunity to ask questions and raise concerns about the proposal.

## **2.4 Formal Consultation**

With consideration given to the feedback provided at the public information session, a proposal for a Special Charge Scheme will be developed by Council officers and sent to all included property owners, outlining the information from the initial letter, plus:

- (a) the objectives of the Special Charge Scheme;
- (b) the design standard required; and
- (c) an estimated cost range, specifying an upper and lower limit for each property.

The letter will include a formal questionnaire, requesting that owners vote on whether or not they support the development of a Special Charge Scheme. A 'nil' response will be treated as a 'no' vote.

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

Results from individual property owners will remain confidential.

## **2.5 Council Resolves to Proceed**

Results of the formal questionnaire will be presented to a Council meeting, along with a summary of the comments that were made on the questionnaires. If the formal questionnaire demonstrates support of 60 per cent of property owners, officers will recommend that Council proceed with the scheme and undertake consultation in conjunction with detailed design and refinement of the cost estimate.

The report to Council may also include commentary on other factors that may be relevant to the Special Charge Scheme, including:

- Amenity:
  - potential for reduction in nuisance from dust
  - number and proximity of houses to the road
  - traffic volumes (known or estimated), other traffic generators, e.g. shops, schools etc.
- Environment: Value and condition of vegetation on roadside and adjoining properties, visible impacts from dust or runoff, proximity to waterways and possible contribution to poor water quality.
- Character: Type of residential development, e.g. urban, rural, any relevant neighbourhood character information, or any relevant planning provisions.

- Construction Standards: Predominant standards in neighbouring roads, drainage provision or demand, if any engineering or traffic issues are to be addressed in the design.
- Any other relevant factors including any “off-site” impacts.

If support for the scheme is less than 60 per cent, officers will recommend that Council does not proceed with the scheme.

However, where there is reasonable justification, a Council officer may recommend proceeding with a scheme, or Council may resolve to proceed with a scheme, where support for the scheme is less than 60 per cent. Factors that may be taken into consideration when making this decision include:

- (a) The level of support based on the results from the questionnaire.
- (b) The seriousness of the existing problems (health, loss of amenity, safety concerns, public nuisance, risk management etc.).
- (c) Impact of non-construction on the environment, including dust and impact on water quality.
- (d) The benefits the scheme would deliver to the residents directly affected and the general community.
- (e) The extent of complaints regarding the area.

If Council resolves to proceed, then the Development Process, outlined in Part 3, will be followed.

## **2.6 Council Resolves Not to Proceed**

If Council resolves not to proceed with a scheme, there will be a moratorium of three years on instigating another proposal for the same scheme. Council officers may recommend prematurely ending the moratorium, where there has been a substantive change in property ownership (at least 50 per cent), within the proposed scheme area.

## **3 DEVELOPMENT PROCESS**

### **3.1 Task Group Formation**

The role of the Task Group is to work with Council officers to develop a design for the works being carried out by the Special Charge Scheme. The Task Group is also responsible for disseminating information to residents and property owners in the scheme. (For further information regarding the Task Group, refer to Appendix 2 – Task Group Terms of Reference.)

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 proceed with 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 elect the members of a Task Group.

Following the election 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.

### **3.2 1<sup>st</sup> and 2<sup>nd</sup> Task Group Meetings**

The Task Group and Council officers will meet to discuss the issues raised and to develop a design to be presented to the residents at the Final Information Session.

Officers will develop the design for the scheme in consultation with the Task Group, over the course of 2–3 separate meetings, giving consideration to the comments received from residents. One of the meetings with the Task Group will be held on-site, so that officers can explain how the design will affect the area. If required, further Task Group meetings may be scheduled.

Where the Task Group cannot reach consensus on a decision relating to the design, a vote of Task Group members may be taken. Where a decision is deemed by the Task Group to be of a high significance, the decision may be put to a vote by all included property owners.

### **3.3 Final Information Session**

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

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

Comments from property owners and residents at the Final Information Session will be recorded for possible inclusion in final design plans.



## **4 STATUTORY PROCESS**

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

A report will be prepared to Council, recommending that Council give notice of its intention to declare a Special Charge Scheme, in accordance with the requirements of section 163 of the *Local Government Act 1989* (the Act).

The proposal to declare must include:

- (a) A statement of objective and purpose of the proposal.
- (b) A statement as to whether the proposal is a 'Rate' or a 'Charge' or a combination of both.
- (c) The criteria that forms the basis of the special charge:
  - the groups, users or areas involved (property owners' names not to be used in the report to Council).
  - the land (by property description) in relation to which the special charge is declared.
  - the manner in which the special charge will be assessed and levied (the apportionment).
  - details of the period for which the special charge remains in force, (dependent on financing plan and instalment plan available for repayment).

### **4.2 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 'Diamond Valley Leader' and in the 'Public Notices' section of Council's website, advising of the Special Charge Scheme and must:

- (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; and
- (d) include a statement that submissions on the proposed scheme are invited under Section 223 of the Local Government Act and outline the different payment options available.

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 property owners.

Council must send a copy of the notice to all persons who will be liable to pay the charge within 3 working days of the day on which the notice is published. In addition to the above information, property owners will also be advised of the different payment options available.

#### **4.3 Consideration of submissions**

At a Future Nillumbik Committee Meeting, all submissions made under Section 223 of the Local Government Act must be considered. Anyone who has made a submission may address the Committee in support of their submission. Council must then resolve to adopt, modify or abandon the scheme.

#### **4.4 Formal Declaration**

After submissions have been considered, another report is required outlining any amendments made in response to the submissions and including a recommendation to proceed with, vary or abandon the scheme. If Council resolves to formally declare the scheme, it must specify in the declaration:

- a) the wards, groups, uses or areas for which the special charge is declared;
- ab) a description of the function to be performed or the power to be exercised; and
- ac) the total cost of the performance of the function or the exercise of the power; and
- ad) the total amount of the special charges to be levied; and
- b) the land in relation to which the special charge is declared; and
- c) the manner in which the special charge will be assessed and levied; and
- d) details of the period for which the special charge remains in force.

#### **4.5 Levy the Special Charge**

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

The format of the notice is as follows:

- (a) the name and address of the person(s) who is liable for payment.
- (b) a description of the property being levied.
- (c) the groups, users or areas involved.

- (d) the land (by property description) in relation to which the special charge is declared.
- (e) the manner in which the special charge will be assessed and levied (the apportionment).
- (f) the amount for which the person(s) is liable.
- (g) a statement about when the special charge is payable.
- (h) details of the period for which the special charge remains in force (dependent on financing plan and instalment plan available for repayment).
- (i) the right to appeal to the Victorian Civil and Administrative Tribunal (VCAT).

#### **4.6 VCAT Appeal Period**

Property owners have 30 days from the date of the notice to appeal to VCAT. After the 30 day period has passed, officers will check with VCAT whether an appeal has been lodged. If there are no appeals with VCAT, Council will proceed in accordance with Section 4.7 of this policy.

#### **4.7 Council Resolution with Regard to Victorian Civil and Administrative Tribunal (VCAT) Determination**

If the matter is referred to VCAT the outcome of the Tribunal hearing will be reported to Council and Council advised to act accordingly. If Council considered that the VCAT imposed conditions render the scheme unviable it may resolve to abandon the scheme. Council will notify all property owners of the VCAT determination and any Council resolution resulting from consideration of the report.

#### **4.8 Commence works and issues notice for payment**

If the scheme is to proceed, a notice for payment pursuant to Section 163 (4) and (5) of the Act must be sent to the person(s) liable to pay for it and must contain:

- (a) the prescribed information; and
- (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.

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

This notice will be sent at the time of the commencement of works. The special charge is to be paid in either of the following ways:

- (a) After works commence an invoice will be issued to all property owners. A payment for the full amount will be indicated on the notice, or
- (b) Quarterly instalments will be payable over a TEN (10) YEAR period. This is a total of 40 instalments. Interest will be charged from the second instalment onwards at the interest rate applied to the principal amount. The instalment dates each year will be 15 January, 15 April, 15 July, 15 October. Interest will be calculated at a fixed rate for the term of the special charge. The interest rate to be charged will be equivalent to the estimated borrowing costs of Council, plus a 1 per cent administration fee that Council charges to administer the loan over the 10 year period.

Interest on late payments will be charged under the *Penalty Interest Act 1983*.

#### **4.8.2 Financial Hardship Policy**

Where a ratepayer is financially unable to make the required repayment/s, they can make an application for a deferral of the charges, in accordance with Council's Financial Hardship Policy.

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

When the works are complete, a final report to Council certifying completion of all necessary works and including final cost apportionment shall be made within 12 months of completion of works. A final cost statement will be issued to all contributors.

At this stage all costs are known and Council may vary the scheme to recover the actual cost of the scheme under section 166 of the Act.

If the variation in cost is greater than 10 per cent, Council must comply with section 166(3)(b) and 166(4) of The Act.

This means that Council must re-declare the scheme and a person may make a submission under section 223 of the Act.

## 5 DESIGN STANDARDS

The design standard for Special Charge Schemes is required to be mindful of neighbourhood character, while providing a suitable solution to the issues of safety, drainage, bank erosion and dust that an unsealed road generates.

Council has two available design standards available for road construction. These are: urban residential and rural.

### 5.1 Urban Residential Roads

The most commonly used standard of road design in urban areas consists of asphalt pavement, concrete kerb and underground kerb and channel. 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 residential' standard of road design is recommended where property sizes are less than 0.4 of a hectare, on the basis that properties of this size are generally not able to absorb sufficient stormwater within the property.



**URBAN RESIDENTIAL ROAD CONSTRUCTION**

### 5.2 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. Stormwater connections to properties are not provided. Where required, open table drains may need to be sealed, in order 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 6–12 months later.

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

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



In assessing the appropriate design standard, Council will consider a number of factors, including:

- Compatibility with the adjacent land use zone
- Size of the blocks
- Wishes of the community
- Topography of the area and proximity of buildings to the road
- Wider impact of works on the drainage catchment
- Neighbourhood character
- Road safety
- Maintenance requirements
- Impact of the works on other road users (e.g.: walker/pedestrians, cyclists, horse riders)

These considerations must be clearly documented in the rationale for the proposed design standard.

### **5.3 Road Width**

Where achievable, the minimum recommended seal width is 5.5m. However, Council may reduce the seal width, if required, to match the existing road conditions. Traffic safety will be taken into consideration when determining road width.

### **5.4 Neighbourhood Character**

To protect neighbourhood character, schemes are 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 vegetation removal.

#### **5.4.1 Land Use Zoning**

A 'rural' standard of construction is the general preference for Council initiated 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 shall be coloured to match the colour of the road.

#### **5.5 Traffic Management Options**

The design proposal may include speed humps, slow points, road narrowing and footpaths. These would assist in controlling traffic speeds and promoting the overall safety of the street. Residents will be given the opportunity to assist officers in identifying where this may be a problem and in suggesting locations for potential traffic control devices and footpaths, throughout the design process.

#### **5.6 Extent of Works**

The extent of works for a street construction scheme must be acceptable to Council. To avoid maintenance and safety issues, the scheme must continue from an existing sealed section of road. Also as a minimum, it is expected that the proposal will extend to the nearest intersection, or the end of the road. For road safety reasons, Council will not end a sealed section of road immediately prior to bend or intersection. Therefore, as part of the scheme it may be necessary to extend the seal a short distance beyond the properties involved.

Where there is benefit to property owners, Council officers may recommend a reduced extent of works, where a safe and practical end point can be achieved, pending the support of the property owners involved.

## **6 GUIDELINES FOR APPORTIONMENT OF COSTS FOR ROAD CONSTRUCTION**

### **6.1 Apportionment of 75 per cent of the road construction cost on the basis of Benefit Unit**

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

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

### **6.2 Apportionment of 25 per cent of the road construction cost on the basis of Amenity Unit**

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

- All properties with frontage to the scheme will be proportioned one (1) Amenity Unit per metre of frontage for that property.
- All properties with a sideage to the scheme will be apportioned one half (0.5) Amenity Unit per metre of sideage for that property.



- All properties with a rearage to the scheme will be proportioned one half (0.5) Amenity Unit per metre of rearage for that property.

## **6.3 Council Contributions**

### **6.3.1 Council Reserves**

Council-owned reserves within the scheme area will attract a liability in accordance with **section 6.1** and **6.2** of these guidelines. Council (as the land owner) shall be responsible for this liability. This does not include land designated as road reserve.

### **6.3.2 Exempt Land**

Council is responsible for the liability of any land that is exempt from Special Charge Schemes (under the *Local Government Act 1989*). This generally applies to Crown Land within the scheme area. This liability shall be in accordance with **section 6.1** and **6.2** of these guidelines.

### **6.3.3 Community Benefit**

In addition to the special benefit derived by those properties with direct abuttal or sole access from a road, Council will make a contribution for 'community benefit' in cases where the construction standard needs to be increased beyond that of a typical residential street, to cater for through traffic. The level of Council's contribution will be based on the cost differential between the required standard and the standard that would be required solely for local traffic.

### **6.3.4 Direct Financial Contribution**

Council may consider a financial contribution if it wishes to upgrade or replace existing infrastructure within the scheme area, at the same time as the works.

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.

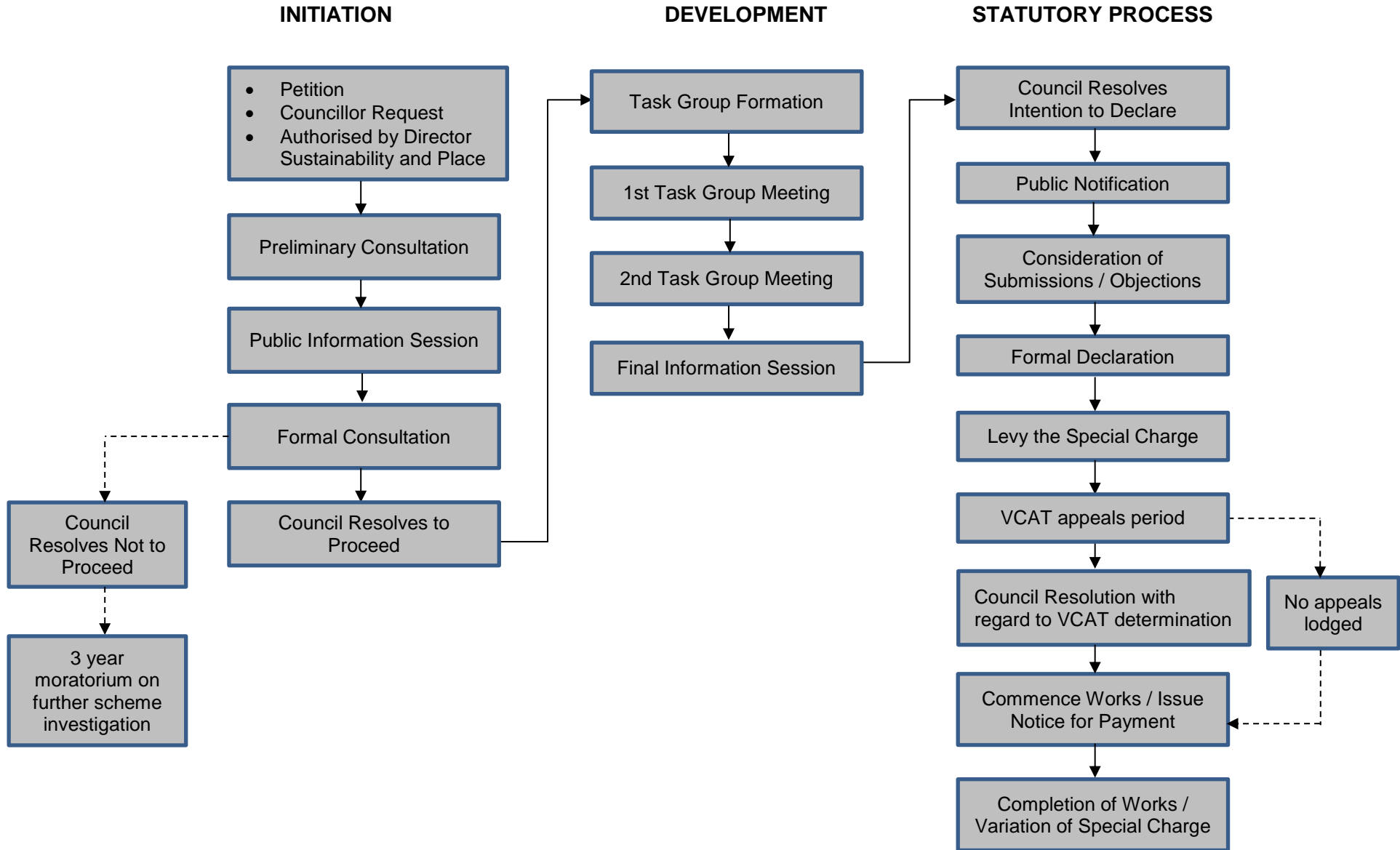
### **6.3.5 Limits to Council Contributions**

The limit on Council's contribution to a scheme for Council-owned land and exempt land will not exceed \$1,000 per average 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 process.

This is to ensure both equity and financial control, to manage Council's obligations in cases where the contribution required for exempt land may be an excessive subsidy provided to individual property owners by the ratepayers of Nillumbik. It provides guidelines to affected property owners in the case where high Council contributions may arise and simply means that such a case would need to go through the Council approval and budget process.

While Council shall make a financial contribution as outlined above, Council is excluded from voting procedures to determine whether or not the scheme proceeds.

# Appendix 1 – Special Charge Scheme Procedure



**TERMS OF REFERENCE**

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**1. Definition**

1.1 A Task Group is a group of property owners and Council representatives, set up for the purpose of ensuring that a Special Charge Scheme achieves the desired outcomes of both parties.

**2. Aim of the Task Group**

2.1 To consider and explore road and drainage construction options for Special Charge Schemes.

2.2 To facilitate feedback between Council officers and property owners.

**3. Role of the Task Group**

3.1 To contribute towards the development of road and drainage options for Special Charge Schemes, which represent the interests of all property owners.

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

3.3 A meeting will be held approximately once every 6 to 8 weeks and shall include a site meeting.

3.4 The Task Group has no delegated powers. The final recommendation for street or drainage construction shall be made by a decision of Council.

3.5 To keep all residents informed of developing construction options and the process.

**4. Membership**

4.1 Membership shall comprise a maximum of five members from a scheme area and a minimum of two Council officers. Where possible the Task Group shall consist of one property owner from each street in the scheme area.

4.2 If a representative cannot be found from a street the next closest street may have two representatives.

4.3 Representatives should nominate in writing prior to the public meeting. A vote may be taken to elect the Task Group.

## **5. Accountability**

- 5.1 The Task Group recommendations will be presented to all property owners involved in the scheme.
- 5.2 From time to time Council may request reports regarding the progress of the Task Group.
- 5.3 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 resident input, information regarding progress of the group, or explanation of options.

## **6. Meetings**

- 6.1 To conduct business, three or more of the property owners on the Task Group must be in attendance at the Task Group meeting.
- 6.2 The Task Group only has the power to comment on proposed construction options or recommend construction options.
- 6.3 Council has input into the final recommended options.
- 6.4 Minutes of all meetings will be kept and circulated to Task Group members.

## **7. Standards of Construction**

- 7.1 The construction options developed by the Task Group must show consideration for relevant Council construction standards, other accepted road construction standards, and traffic management requirements.

**END OF DOCUMENT**