



Policy for Special Rate/Charge Schemes in Commercial Centres

June 2008

Prepared by the Business & Economic Development Unit
Whitehorse City Council

This document is a statement of policy only and does not, either in its nature or its application, preclude the decision maker from exercising its discretion as it sees fit and from taking into account relevant considerations, or be such as to involve the decision maker in taking into account an irrelevant consideration.

SCOPE

This policy applies to all commercial centre special rate/charge schemes adopted by Council, including rates/charges raised on behalf of business associations to carry out promotional and marketing and business development activities within activity centres.

OBJECTIVES

The objectives of this policy, in relation to special rate/charge schemes are –

- to ensure transparent and consistent practices are followed to maximise business consultation and participation when considering a request to establish or renew a special rate/charge scheme;
- to ensure fairness and equity in applying a special rate/charge scheme and assessing the distribution of costs on the basis of the benefits provided to businesses included in a scheme; and
- to ensure compliance with the requirements of the Local Government Act 1989 in relation to Council declaring and levying a special rate/charge scheme and Council and the business association in the ongoing administration of a special rate/charge scheme.

OVERVIEW

Within the City of Whitehorse there are approximately 85 commercial centres. The size of these centres ranges from 2 businesses to over 100 businesses and the mix of businesses include, retail, personal and business services. Each centre will have specific reasons for raising a special rate/charge scheme and therefore it is difficult to provide a comprehensive approach to the process. As a result this policy contains three sections:

- Introduction – this section describes terms, processes and identifies timelines for the implementation of a special rate/charge scheme.
- Business Association and Business Plan – this section suggests an approach that can be taken in establishing a business association that represents the commercial centre. It also describes how a business plan can be used to assist the establishment of a business association and the establishment of a special rate/charge scheme.
- Special Rate/Charge Scheme Statutory Process – this section outlines the steps that Council must follow in implementing and monitoring a special rate/charge scheme. This is the most important part of the process as this

is what is required by law and, as a result, sets the direction for all other steps in the processes.

INTRODUCTION

The Council Plan 2006 – 2010 establishes the key strategic objectives for the City and recognises the importance of fostering and supporting the local economy and community. Commercial centres play both an important economic and community role in the City of Whitehorse.

Council is committed to improving the commercial centres through an extensive ongoing program of physical works and business development programs. In addition, Council, at the request of a business association, facilitates the implementation of special rate/charge schemes for the promotion and marketing of commercial centres.

What is a special rate/charge scheme?

A special rate/charge scheme is a method of raising additional funds through property rates. These are different from general rates and charges because they are levied for particular works or services that collectively benefit properties within a defined area. Council can raise either a special rate or a special charge (or a combination of both), the differences of which can be described below:

Special Charge: is a flat fee levy calculated by dividing the number of properties within the defined geographic area by the total amount to be raised.

Special Rate: is a levy calculated using the Council's valuation of each property (Capital Improved Value) to determine the amount of money that each property will contribute to achieve the total value.

The amount of money raised through a special rate/charge will depend on the level of projects or services to be delivered and the cost of delivering these projects or services. The number of years that a special rate/charge scheme runs for, again, depends on the length of time it is necessary to achieve the objectives to be delivered.

Types of Schemes

Infrastructure Special Rate/Charge Schemes

Infrastructure schemes are designed for permanent or long-term infrastructure that is beyond the standard infrastructure that council supplies, where the upfront costs are considerable and/or there may be requirements for ongoing maintenance of infrastructure.

Under this type of scheme, the infrastructure work would be completed within a short period of time, say 6 to 9 months. Council would pay for the work up front and undertake collection of the money through a special rate/charge that can occur over a 5 to 10 year period.

When applied to a commercial centre this special rate/charge would be used for permanent infrastructure such as a decked car park, uniquely designed street furniture, large-scale signs, etc.

Council has an existing policy regarding the use of special rate/charge schemes for infrastructure projects.

An 'infrastructure' special charge within a retail precinct would allow the Association to commence or complete projects which relate to the 'physical' or 'infrastructure' needs and requirements of the Centre.

Marketing and Promotional Special Rate/Charge Schemes

These schemes are only established in commercial centres that have an incorporated business association and provide funding for promotional, marketing and business development projects and activities.

Under this type of scheme, the business association determines the projects and activities that will be delivered and the associated amount of money required. Money is collected and forwarded to the business association at fixed terms based on the delivery of agreed projects over the duration of the scheme. Generally these schemes run for five years.

The purpose of these schemes is to allow businesses within a defined area to form a collective group and in doing so benefit from resources that will provide collective advertising, promotion and business development.

Annual Adjustments

As most schemes run for an average of 5 years the cost of delivering projects and services increases. For this reason most schemes will have an annual increase by the value of CPI (Consumer Price Index). As a result the amount collected during the last year of a scheme will be more than what is collected during the first year.

If the method of calculation used is a special rate/charge, adjustments will also be made as the valuations of the properties change. The value a property owner/business contributes could go up or down depending on the valuation.

Minimum and Maximum Contributions

In order to more evenly distribute the value of payments across properties minimum and maximum values can be established. When these are used a minimum value might be \$100 and a maximum value might be \$500, per property, per annum. As a result of CPI, the minimum paid over the course of a special rate/ charge might increase whereas the maximum amount will be capped.

Primary and Secondary Benefits

In some instances it is appropriate to define areas of primary and secondary benefit and charge different levies in accordance with the benefit that each of the properties are to receive.

The Process of a Special Rate/Charge Scheme

Implementing a special rate/charge scheme requires Council and other stakeholders to invest considerable time and resources. To ensure the effective delivery of a special rate/charge process and the best use of resources, it is important that each step is followed. There are generally three stages to the process.

The first stage is considered **Best Practice** and it is done to ensure there is understanding of and support for a special rate/charge scheme.

The second stage is a **Statutory Process** and it is directed by the Local Government Act 1989. This stage is a process that is the sole responsibility of Council.

The third stage is the **Ongoing Implementation**, which requires coordination between both the business association and Council and is also directed by the requirements of the Local Government Act 1989.

The following table identifies the steps required for the implementation of a special rate/charge scheme and estimated times for each step. Although the process requires a considerable amount of time, if not followed it can result in extensive and costly delays and potentially the abandonment of a special rate/charge scheme.

SPECIAL RATE/CHARGE SCHEME PROCESS

	Task	Responsibility	Time
Stage 1 - BEST PRACTICE			
Step 1A	Business Association to adopt Business Plan that includes support for a special rate/charge scheme.	Business Association	
Step 1B	Establish an incorporated Business Association.	Business Association	
Step 2	Business Association to inform Council in writing of interest to implement special rate/charge scheme (including expected amount to be raised, geographic boundaries, incorporation documents etc).	Business Association	-
Step 3	Businesses and property owners to be surveyed by Council to determine level of support for special rate/charge scheme.	Council	4 to 6 weeks
Step 4	Council to determine final value, geographical area and apportionment of special rate/charge in consultation with Business Association.	Council/ Business Association	2 to 4 weeks
Stage 2 - STATUTORY PROCESS			
Step 5	Report to Council for approval of intention to proceed with special rate/charge resolution.	Council	4 weeks
Step 6	If Council resolves to commence the statutory process, a public notice will appear in the local paper and Council's website. Submission under section 223 must give 28 day notice. Within three days Council is to send letters to all affected businesses and property owners informing of intention to raise special rate/charge scheme. Businesses and property owners have 14 days to make a submission and 28 days to make an objection. Objectors must provide declaration indicating payment responsibility of the proposed rate/charge.	Council	4 weeks
Step 7	Responses assessed. Council will review the scheme and determine either to proceed or not to proceed with the proposal, or to recommend a variation to the special rate/charge scheme proposal. If Council receives objections from more than 50%, the special rate/charge scheme will not proceed. The Business Association will be advised of the outcome.	Council	1 to 5 weeks
Step 8	Report to Council seeking resolution to introduce special rate/charge scheme.	Council	4 weeks
Step 9	Council to send letters to all affected businesses and property owners informing of resolution of Council to raise special rate/charge. Affected persons liable to pay the rate have 30 days to appeal to the Victorian Civil and Administrative Tribunal (VCAT).	Council	4 weeks
Step 10	If there are no appeals to VCAT, Council will initiate special rate/charge scheme.	Council	Total Estimate d Time 23 to 31 weeks
Step 11	If appeals are received by VCAT, the timeline could be extended by up to 12 weeks or more.	VCAT	Total Estimate d Time 35 to 43 weeks
Stage 3 - ONGOING IMPLEMENTATION			
Step 12	Business Association to provide documentation to Council as set out in signed agreement.	Business Assoc/Council	3-5 years

STAGE ONE: BEST PRACTICE BUSINESS ASSOCIATIONS AND BUSINESS PLANS

Not all commercial centres will have a business plan or a formal business association. There are a number of commercial centres where an existing group of businesses meet on an informal basis to consider opportunities to work together and pool resources.

However for the purposes of introducing or renewing a special rate/charge the following must be in place:

- **A Business Association that is Incorporated and Active**

A business association needs to be incorporated and its members should meet regularly to promote the interest of the centre whilst complying with the statutory obligations of the Associations Incorporations Act 1981. Council will require incorporation by an association before considering a request to initiate a special rate/charge scheme to be administered as it offers protection for the association's office holders from the debts and liabilities incurred by the association and also provides protection to Council when distributing funding raised through property rates.

If the business association is not already incorporated and is seeking to formally incorporate and create rules of association, it should visit the Consumer Affairs Victoria Website (www.consumer.vic.gov.au).

- **A Business Association that is Representative**

The business association should represent the property owners and businesses in a defined local geographic area. In order to ensure the ongoing success of a business association and special rate/charge scheme there should be overwhelming support by property owners and businesses.

- **A Business Association that has Clearly Defined Objectives**

The business association must have a current business plan that is formally adopted by the association, which clearly identifies the direction and objectives of the group.

Business Plan

It is best practice for a business association that represents the interests of a commercial centre to have a business plan that is endorsed by the membership.

The business planning process will require the businesses within a centre to go through a process that identifies the strategic objectives and direction of a commercial centre, as well as the means and resources required to achieve these strategic objectives.

Amongst other initiatives, a business plan may include support for the implementation of a special rate/charge scheme as a way of raising funds for the delivery of promotional, marketing and business development activities for a commercial centre. It should be noted that a special rate/charge scheme is not the only option for raising funds for these types of activities. For projects that do not require significant amounts of funding a commercial centre should consider other methods of raising funds that do not require the resources and administration requirements of a special rate/charge scheme.

Once a business association has adopted a business plan, it can be submitted to Council where it can be officially reported and recognised. This will assist in demonstrating to Council that the business association has consulted with the membership and has given thought to the future direction of the commercial centre. If the business plan supports the implementation of a special rate/charge scheme it will also give notice to Council that a special rate/charge scheme will be requested. This will allow Council time for the planning and allocation of resources to assist with this process.

Assistance for the Preparation of a Business Plan

Council may provide funding of up to \$15,000 for the preparation or revision of a business plan for a commercial centre where the ownership of property in the centre is predominantly comprised of individual land titles.

Funding may be sought by businesses in a commercial centre that does not currently have a formal business association but where the preparation of a business plan may result in the formation of a formal business association. Funding may also be sought for a commercial centre that has a formal business association where the review of an existing business plan is required.

A request for funding must be submitted in writing to the Business and Economic Development Unit. Funding will be dependant on budget availability and, if successful in receiving the funding, Council will require and assist with a tendering process for the selection of a consultant to help with the preparation of the business plan. The requirements for tendering will be carried out in accordance with Council's tendering procedures.

Structure a Special Rate/Charge Scheme

The establishment and ongoing administration of a special rate/charge scheme requires a considerable amount of resources on behalf of both a business association and Council. Before proceeding with the statutory process to establish a special rate/charge scheme there are five components that both the business association and Council need to ensure are understood by all those involved:

1. Purpose

The purpose of a special rate/charge scheme needs to be clearly defined either as a marketing and promotion scheme or an infrastructure scheme. Once all of the components of a scheme have been finalised and a scheme has been implemented, changes to the scheme can not be made. The ability to continue the scheme over a specified period will be based on the ability of a business association to deliver the specific objectives and deliverables of a scheme.

2. Support

Support from those involved in a scheme is critical. In order to ensure the scheme is effectively delivered it is important that support for the scheme is maintained through the development and ongoing implementation. For this reason, it is important for both property owners and businesses to be clearly informed of all elements of the scheme.

3. Geographical Area

The specific geographical area that a scheme will cover needs to be clearly identified. In areas where a commercial centre is easily defined the boundaries will be obvious. In larger commercial areas determining the boundaries could require more assessment as there might be a specific core of businesses that the scheme would apply to.

When identifying the boundaries it is important to note that only those businesses within the boundaries of the scheme can receive benefits from the scheme.

A special rate/charge applies to any retail, commercial or property used for professional purposes of which is capable of receiving Council rates within the geographical area outlined by the trader association.

4. Amount of Money to be Raised

Business in different commercial centres will have different value thresholds when determining support for a special rate/charge scheme. The total amount to be raised will be determined by the services and activities that will be delivered over a given period of time. In order to identify a realistic amount to be raised the following factors should be considered:

- The extent to which benefit can be gained by pooling resources together
- The number of properties that will contribute
- The number of years it will take to achieve expected benefits

Under section 166(3)(b) of the the Local Government Act 1989 specifies that a variation to a previously levied special rate or charge that will result in an increase of 10% or more in the amount that any person has to pay must comply with sections 163(1A), (1B) and (1C) and be subject to a section 223 process.

5. Budget and Reporting

Establishing a clear and concise budget is an effective method for communicating the benefits of a special rate/charge scheme. A budget is required to gain support from property owners and businesses and to comply with the ongoing reporting requirements over the life of the special rate/charge scheme.

Under section 163(9) of the the Local Government Act 1989 it specifies that the expenses recovered by a Council as part of a Special Rate or Special Charge may not include costs relating to VCAT proceedings under either section 185 of section 185AA of the act. The Victorian Civil and Administrative Tribunal Act 1989 empowers the Tribunal to award costs if it considers it appropriate.

Over the period of scheme, there are regular and ongoing reporting requirements that a business association is responsible for (i.e. quarterly reports, tax invoices, budgets, annual audited statements) in order to receive payments from Council. It is important that a business association ensures systems and resources (i.e. people) are in place to satisfy the reporting requirements.

Business Association to Prepare Proposal

Once the business association has identified the structure of a scheme they should inform Council in writing of their interest to implement a special rate/ charge scheme. A business association's request to implement a special rate/ charge scheme should provide Council with specific details regarding the consultation process that has been undertaken including:

- The nature of consultation (e.g. surveys, forums, meetings etc);
- Number/ Proportion of businesses and property owners within the geographic area who have been contacted;
- An indication of how support for the proposed rate/ charge has been determined; and
- Details regarding businesses that have or may display an opposition to the rate/ charge and why.

Council Analyses Proposal

Following the approach from the business association in determining the level of support for the rate/ charge, Council may then conduct an analysis of the proposal and a survey of all property owners and businesses. This process may involve a number of considerations based on the information above including:

- an assessment of the proposed annual amount to be raised;
- whether it should be a special rate or a special charge (or a combination of both);
- the properties to be included in the scheme area;
- the period of the scheme;

- 'primary' and 'secondary' benefiting areas in the commercial centre or area, recognising that there are often varying degrees of special benefit to be derived from a special rate/charge scheme; and
- level of support for the proposed scheme.

The results of this will determine whether or not Council will support the proposal and commence the statutory process.

STAGE TWO: STATUTORY PROCESS

Once it is established by Council that there is a strong level of support for a special rate/charge scheme, Council will commence the statutory process. This process is a legal requirement of Council as directed by the Local Government Act 1989. For this reason, the process is run by Council and once initiated it cannot be altered. This is why it is important to clearly establish the structure and level of support for a scheme prior to statutory process.

Please note: The process described below is a simplified version of the Local Government Act (1989). For more comprehensive information regarding the Act, please visit <http://www.austlii.edu.au/>.

Step 1 – Council gives approval of intention to declare a special rate/charge scheme.

A report will be prepared informing Council of the business association's request for Council to raise a special rate/charge. The report will contain all of the detail of the proposed special rate/charge scheme and any background information informing Council of the level of support for the proposed scheme.

If Council approves this request, the statutory process is formally initiated.

Step 2 - Notification of intention to declare a special rate/charge scheme.

A resolution of Council is required to commence the statutory process. If Council resolves to give public notice of its intention to declare a special rate/charge, a notice will appear in a local newspaper and all affected property owners and businesses will be notified within 3 days of the public notice being published.

As required by the Local Government Act 1989, Council will detail which persons have a right to object (different from making a submission), how those persons may object, that objections must be in writing and lodged with Council within 28 days of the public notice being published.

Step 3 – Council determines direction.

Based on the written submissions received and the recommendations of the committee, a report will be prepared for Council that will either recommend for the proposed scheme to be declared (proceed) or to be abandoned.

Step 4 - Notification of implementation of special rate/charge scheme.

After at least 28 days have expired from the giving of public notice (and if there are not more than 50% of objections) a resolution of Council will:

- introduce the special rate/charge scheme; or
- introduce the special rate/charge scheme with amendments; or
- determine not to proceed with the special rate/charge scheme.

If Council resolves to introduce a special rate/charge scheme, all affected property owners and businesses will be sent a letter informing them of the introduction of a special rate/charge scheme. The letter will include all information required by the Act. A person directly affected by the special rate/charge scheme has a right to appeal to the Victorian Civil and Administrative Tribunal (VCAT). Generally, an appeal must be lodged at VCAT within 30 days.

If no appeals are received by VCAT, Council will proceed to implement the special rate/charge scheme and an agreement will be signed between Council and the business association.

STAGE THREE: ONGOING IMPLEMENTATION

A Business Association which receives the proceeds of a special rate/ charge scheme from Council, as part of its obligations under the agreement previously referred to, will be required to meet a range of statutory obligations under (including compliance with) the Associations Incorporation Act 1981, registration for GST and an ABN with the Australian Taxation Office. The following documents must be made available to Council –

- Certificate of Incorporation
- Insurance - Certificate of Currency
- Australian Business Number
- Proof of Registration for GST
- Current list of Committee Members

To ensure Council is meeting its statutory and other legal obligations, the documentation required from the Business Association in accordance with the terms of the agreement, must include –

- Minutes of Committee meetings
- Annual budget
- Quarterly expenditure summary and invoices
- Annual audited accounts
- Annual report of achievements
- Rules of Association

The purpose of a special rate/ charge scheme is to raise funds that will provide a special benefit to properties (and businesses) in a given area. The

monies raised by way of special rate/charge scheme are in the nature of a tax. As such Council is responsible for these monies, on the basis that they are “public funds”.

Over the period of a special rate/charge scheme, it is and remains imperative that the process described above has been followed to ensure benefit is being provided to those property owners and businesses involved in the scheme, and further that Council is complying with its obligations under the Local Government Act 1989 and the general law in relation to being accountable for the proper expenditure of public moneys.

There are two reasons why a business association needs to ensure that all process are followed and documentation is provided:

1. Should information that is required to be provided by the business association not be provided to the satisfaction of Council when requested, where the agreed activities have not been delivered, where funds have not been expended or where funds have not been expended according to the purposes of the special rate/charge scheme, Council may withhold instalment payments to the business association and the agreement may be terminated.

2. At any point during the period of the special rate/charge scheme, if a property owner or business that is contributing to the scheme is of the opinion that they are not receiving benefit as defined by the scheme, they can make a submission to VCAT. An unfavourable ruling can result in the termination of the scheme.

CONCLUSION

The purpose of this policy is to provide guidance and support for the implementation of special rate/charge schemes for commercial centres in Whitehorse. The policy has provided information that will assist business associations in identifying the resources and systems required during the establishment, implementation and administration of a scheme.

By encouraging best practice and ongoing participation and communication between Council and a business association the process can be effectively documented which will ensure the successful delivery of a scheme and reduce the risk of a scheme being challenged and potentially abandoned.

Contact: Will Gerhard on 9262 6453