

## Special Charge Scheme for Infrastructure Works

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<b>Last Endorsement Date</b>	24 April 2018		
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Macedon Ranges Shire Council acknowledges the Dja Dja Wurrung, Taungurung and Wurundjeri Woi Wurrung Peoples as the Traditional Owners and Custodians of this land and waterways. Council recognises their living cultures and ongoing connection to Country and pays respect to their Elders past, present and emerging. Council also acknowledges local Aboriginal and/or Torres Strait Islander residents of Macedon Ranges for their ongoing contribution to the diverse culture of our community.

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## **1. PURPOSE/OBJECTIVE**

The purpose of this policy is to ensure that Council has a transparent and equitable methodology for:

- ensuring a prompt response, based on sound engineering considerations, to community requests for upgrading a road, drain or kerb and channel;
- transparently responding to requests by the community for the upgrade of a road, drain or kerb and channel that may result in a Special Charge Scheme;
- seeking to introduce a Special Charge Scheme as a result of identifying the need for a road, drain or kerb and channel upgrade;
- determining the cost-share ratio between Council and benefiting ratepayers; and

## **2. BACKGROUND**

Council receives requests from the community to upgrade roads. Most frequently, this is upgrading unsealed roads to sealed roads. Before progressing to a Special Charge Scheme, Council needs to determine whether or not it may support the road upgrade. If initial sound engineering investigations do not support the upgrading of a road, the process should cease.

If the engineering investigation supports the consideration of upgrading the road, then it may declare a special rate to assist in paying for the upgrade. The *Local Government Act 1989* (the Act) enables Councils to declare a special rate, charge or a combination of both in order to recover the partial cost of capital works and economic development projects from property owners with an identified special benefit.

This policy provides guidance and processes for developing and implementing a special rate (if one is needed) in accordance with Section 163(1)(a) of the Act.

## **3. SCOPE**

This policy applies to Special Charge Scheme infrastructure projects, which are primarily, but not limited to, the following:

- construction of new road;
- upgrading of existing roads;
- installation of drainage systems; and
- installation of kerb and channel.

Once the works are constructed, they become Council's responsibility to maintain to appropriate standards.

## 4. DEFINITION

A Special Charge Scheme is defined by section 163 of the *Local Government Act 1989* as follows:

'A Council may declare a special rate, a special charge or a combination of both, only for the purposes of:

- Defraying any expenses; or
- Repaying (with interest) any advance made to or debt incurred or loan raised by the Council.'

## 5. INITIATION

### 5.1. INITIATION OF SCHEME

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

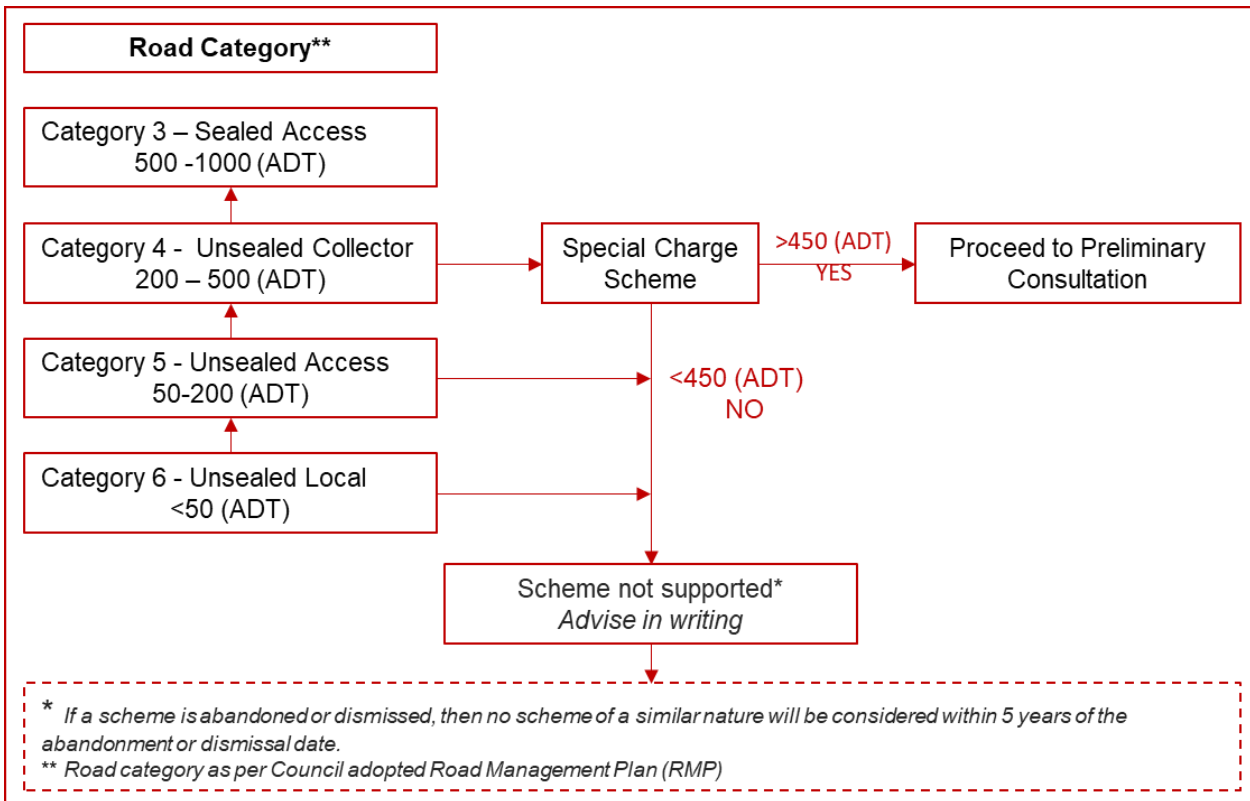
- a. the receipt of a petition from property owners (support >33.3% or 10 residents, whichever is greater) who would be required to contribute to the scheme.
- b. an officer responding to community interest, road or drainage management requirements, or an identified risk as authorised by the Director Assets and Operations.

### 5.2. INITIAL ASSESSMENT

Upon receiving a petition from residents for a new or upgraded infrastructure officers will undertake an initial assessment with reference to various Council policies and strategies (refer to Section 12). Additionally, officers will consider any prior scheme outcomes that are relevant to the request made in the petition.

#### ***a. Road and associated infrastructure:***

For the request to seal the road and upgrade associated infrastructure, the following process will be used for an initial assessment.



**Figure 1: Initial Assessment Criteria for Road and associated infrastructure**

For example, in the case of a request to seal an unsealed road, officers will undertake traffic counts on that road and compare them with the road categories described in the Council's Road Management Plan (RMP), referenced in Table 1 below.

Note that a traffic survey may indicate that the road falls within the typical average daily traffic (ADT) range of up to 450 vehicles per day. In these cases, the road will remain as an unsealed road.

For example, if a road is currently classified as a Category 5 unsealed road, it is expected to carry 50 to 200 vehicles per day (ADT). Following the traffic survey, there may be three outcomes when applying Table 1:

- If less than 175 ADT, it would remain at its current category (e.g. Category 5) with the same maintenance regime.
- If greater than 200 ADT, it may be upgraded to a higher category (e.g. category 4), which will benefit from a more regular maintenance regime.
- If more than 450 ADT, then officers will consider it as eligible for consideration under the Special Charge Scheme.

Table 1: Council Local Road Network Classification as per Road Management Plan

Category	Type	General Description	Typical ADT
1	Sealed Link	Sealed roads carrying high traffic volumes	>2000
2	Sealed Collector	Sealed roads carrying low traffic volumes are generally of a local nature. Provides access to properties on that road and adjoining roads.	1000-2000
3	Sealed Access	Sealed roads provide access to properties on that particular road.	500-1000
4	Unsealed Collector	Unsealed roads carrying low traffic volumes are generally of a local nature. Provides access to properties on that road and adjoining roads.	200-500
5	Unsealed Access	Unsealed roads provide access to properties on that road. Generally dead-end roads	50-200
6	Unsealed Local	Roads deemed to be of reasonable public benefit that do not meet Category 5 standards	<50

***b. Drainage and other infrastructure***

The following factors are to be considered when assessing the need for a Special Charge Scheme for drainage and other infrastructures:

- Existing conditions, the need for the project, matters of health, safety and amenity;
- Community and Special Benefits;
- Infrastructure provision priorities based on adopted strategic and asset management plans;
- Cost/benefit ratio;
- Level of funding required.

### 5.3. PRELIMINARY CONSULTATION AND ASSESSMENT

After the initial assessment (as described in Sections 5.1 and 5.2) and initiation of the Special Charge Scheme, a survey letter will be sent to all property owners, outlining:

- a.** The reason for a Special Charge Scheme and the opportunity for benefiting property owners to contribute comment to this process before Council proceeds any further;
- b.** An explanation of the basic principles of the Special Charge Scheme and the future steps leading to its finalisation;
- c.** The name of the council officer for contact in relation to individual enquiries;
- d.** A property specific indicative estimated cost and construction layout plan, including relevant information about the design standards and method of apportionment of the costs. Refer to *Section 8* for cost apportionment principles.
- e.** A questionnaire seeking their opinion on Council formally giving notice of its intention to declare the Special Charge Scheme.

It should be noted that the property specific estimate is based on annual unit rates and may vary plus or minus 20% once finalised.

The letter includes the questionnaire requesting property owners vote on whether they support the special charge scheme.

A failure to respond to the survey is treated as a 'no' vote. Results from individual property owners will remain confidential.

Council will only proceed further with investigating a proposed Special Charge Scheme if it receives written support from a clear majority (more than 66.6 %) of benefiting property owners.

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

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

If there is not majority support of 66.6% or greater, the benefiting property will be advised that the survey did not meet the minimum survey result to proceed and that no similar scheme can be initiated or considered within five years of the abandonment date.

#### **5.4. COUNCIL MEETING TO CONSIDER A SPECIAL CHARGE SCHEME**

Should there be more than one scheme during the same financial year, the projects will be prioritised based on the higher community benefit subject to the budget available.

Results of the formal questionnaire resulting in over 66.6% will result in a report being presented to a Scheduled Council Meeting. In certain circumstances, linked to public health, officers might present a report to a Special Council Meeting for a special charge scheme where the results were less than 66.6%. The report will present a summary of the comments that were made on the questionnaires. If Council proceeds with the intention to declare a Special Charge Scheme, it will do so in accordance with the requirements of Section 163 of the Local Government Act 1989 (the Act), as described in Section 6.

Council contribution funding mechanisms, including commitment, shall be finalised before declaring a special charge scheme where Council is required to make a contribution.

If Council resolves not to proceed with a scheme, there will be a moratorium of five 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.

Following a resolution of Council, officers will prepare report for Council, recommending that Council give notice of its intention to declare a scheme.

### **6. STATUTORY PROCESS**

#### **6.1. RESOLUTION TO GIVE NOTICE OF INTENTION TO DECLARE A SPECIAL CHARGE**

Should Council resolve its intention to declare a Special Charge, public notice, and separate notices to benefiting property owners who will be liable to pay the Special Charge must be given in accordance with the requirements of Sections 163(1A), (1B), (1C), 163A, 163B and 223 of the Act. Council must give public notice of its intention to declare a scheme at least 28 days before making the formal declaration.

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

Written submissions and objections lodged in support of or in opposition to a Special Charge Scheme may request that the submitter be heard in support of their written submission. Persons wishing to be heard may appear before the Section 223 Committee of Council.



## **6.2. COUNCIL RESOLUTION FOLLOWING CONSIDERATION OF SUBMISSIONS AND OBJECTIONS**

Following consideration of submissions and objections, Council may resolve to:

- Abandon the proposed Special Charge Scheme by not giving effect to the proposed declaration to levy the Special Charge; or
- Proceed, with or without minor variation to the original scheme and declare the implementation of the proposed Special Charge: or
- Prepare a new Special Charge Scheme, due to the need to significantly modify the original scheme, thereby requiring the process to be recommenced.

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

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

- The objectives of the proposal, specifying why the works are considered necessary and who the beneficiaries will be;
- A plan defining the scope of the works;
- Details of Consultation with benefiting property owners undertaken to date;
- Council contribution funding mechanisms with funding commitment for Council contribution; and
- A recommendation for the use of a Special Charge Scheme.

## **6.3. DECLARATION NOTICE FOR SCHEME**

Once the scheme has been declared, a Notice of Levy with estimated costings will be sent to benefiting property owners. This cost will also be placed on the benefiting properties as a charge and will be recoverable should any sale occur.

## **6.4. DECISION REVIEW**

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

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

Council will inform all residents if there is a VCAT appeal to Council's declaration of the scheme.

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

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

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

## **6.5. IMPLEMENTATION PROCESS**

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

If following completion of works it is ascertained that the actual costs are less than the estimated costs, a reduction which is proportionate to the contributions that will be received by Council must be made to the benefitting property owners included in the scheme.

If following completion of the works the actual costs are more than the estimated costs, then:

- If the difference is not a material variation, the additional actual costs may in accordance with Section 166(1)(b)(i) of the Act be apportioned amongst the persons who are liable to pay the Special Charge rates in the same proportions in which the estimated amounts were apportioned; or
- If there is an increase equal to or greater than 10%, Council will pay the difference between the actual and the estimated costs.

## **6.6. FINAL RECONCILIATION AND REPORT TO COUNCIL**

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

- That the works are complete and the costs are finalised;
- That the final apportioned costs are reconciled and presented for Council to consider; and
- The details of any variation between the original estimate and the final apportioned cost.

Following the calculation of final costings in relation to the Special Charge Scheme, a Final Notice of Levy will be sent to benefiting property owners in accordance with Section 163(4) of the Act. This Notice must comply with the requirements of Section 163(5) of the Act and the Local Government (General) Regulations 2004.

Notice of Special Charge Levy must be served on all contributors, indicating all the relevant scheme details and costs. This will be accompanied by an invoice which is to be issued within 30 days of the final reconciliation report to Council.

## **7. DESIGN STANDARDS**

Council's current Engineering Standards shall be used to design roads and other civil infrastructures. The design for the special charge scheme shall consider neighbourhood character while providing a suitable solution. Other widely accepted design documents such as the Engineering Guidelines will serve as reference documents as part of the design process.

### **7.1. ROADS NETWORK**

Council's Engineering Standards provide designs for each land use zone, including Township and Rural Roads design standards. Macedon Ranges Planning Scheme zoning boundaries shall be used to define the road design standards. Any road within the township shall follow Urban Road standards, and the rest shall follow Rural Road standards.

The most commonly used standard of road design for category 3 and above roads in urban areas consists of asphalt pavement, concrete footpath (one side minimum), kerb and channel, street trees, and underground drainage network. Existing properties will be connected to the underground stormwater drainage network where appropriate.

In rural areas, the most common standard of road design consists of a spray seal with open table drains. Stormwater connections to properties are not provided. Most rural roads are

constructed using a sprayed seal. This takes the form of two coats of bitumen and aggregate.

## **7.2. DRAINAGE, KERB AND CHANNEL NETWORK**

All the underground drainage and open channels shall be designed in accordance with the Council's Engineering Standards.

## **7.3. EXTENT OF WORKS**

The extent of work for a special charge scheme must be acceptable to Council. To avoid maintenance and safety issues, the scheme must continue to and/or from an existing equivalent section of infrastructure.

As a minimum, a road is expected to extend to the nearest intersection or the end of the road. For road safety reasons, Council will not end a sealed section of the road immediately prior to a bend or intersection. Therefore, as part of the scheme, it may be necessary to extend the seal a short distance beyond the properties involved.

## **8. GUIDELINES FOR APPORTIONMENT OF COSTS**

### **8.1. APPORTIONMENT PRINCIPLES**

The calculation of the maximum total levy for a Special Charge Scheme must comply with Section 163(2), (2A) and (2B) of the Act and the Guidelines made by the Minister for Local Government pursuant to Section 163(2C) of the Act.

In addition, the following requirements must also be considered in determining the basis on which apportionment of the Special Charge Scheme amongst benefiting property owners will be determined:

#### **8.1.1. ROAD AND ASSOCIATED INFRASTRUCTURE**

In the case of typical road construction, the cost will be shared between Council and benefiting property owners. The table below identifies this breakdown.

**Table 2: Cost Apportionment between Council and Benefiting Residents for Road Upgrade**

<b>Percentage of Through Traffic on Subject Road</b>	<b>Benefitting Property Owners' Contribution</b>
Nil (i.e. Courts, Non-Through Roads)	90% of cost
Through Road	65% of cost

The apportionment of costs between individual benefiting property owners will be calculated on the following principles:

- 70% of the overall cost apportionment to the subject property is calculated on the length of frontage of the property for the road that is proposed to be upgraded and the remaining 30% is calculated on the number of accesses from the subject property onto the proposed road for upgrade;
- That the contribution from any single property shall be limited to 7.5% of the total project cost per property which is deemed to generate up to 10 vehicle movements per day; and
- Where Council determines that special circumstances exist, such as property owned by community or not-for-profit organisations, Council reserves the right to amend the apportionment to reflect the significance of the special circumstances.

BPOC - Benefitting Property Owners' Contribution

F – Frontage

A – number of Accesses

CP – Council's Mandatory Portion

\$T – Total Cost of Special Charge Scheme

X = Benefitting Property Owners' Contribution % based on Table 2

$$BPOC = X\% * ((F(res)/F(tot)) * \$T * 70\% + A(res)/A(tot) * \$T * 30\%)$$

Cost apportionments for the townhouse and units are to be calculated based on Appendix 2. This will provide clarity and equitable cost distribution where the frontage are shared between multiple dwellings compare to single dwelling on single lot. All units/townhouses are to contribute equal amount for access number.

### **8.1.2. DRAINAGE NETWORK**

In the case of other schemes to which this policy applies, Council will determine the most reasonable method of distribution of the Special Charge amongst benefiting property owners and then follow the same process in all other respects.

For drainage the table below details the standard approach.

Type of Works	Description	Benefitting Property Owners' Contribution
Easement Drains	<p>The cost is to be equally shared between the benefitting properties on the high side of the drain, where the legal point of discharge is to the new drain, and the benefitting properties on the low side that receive protection from the drain.</p> <p>This is consistent with the principle that upper and lower property owners receive equal benefits.</p> <p>Where Council considers that the size of the drain should be increased to provide for stormwater other than for the benefitting properties, Council shall contribute the additional cost associated with the provision of such drainage.</p>	100% to benefitting properties.
Drains	In the case of new drain installation or any drainage-related work within the road reserve or public land, the total cost of the work is to be apportioned based on the catchment area between Council (road and public reserve) and the private property owner. Apportionment of benefitting property owner's contribution shall be based on the catchment area.	% of catchment Area

Council rarely receives requests for kerb and channel upgrades separate from road upgrades or drainage upgrades. If a request for kerb and channel is received, officers will follow the guidance included in this document to determine cost apportionment.

### 8.1.3. FINANCIAL ARRANGEMENTS

Benefitting property owners must be given the opportunity to pay the Special Charge in instalments over a period. Any property owner may make pay a lump sum if they wish.

Council can facilitate the following payment options:

- Pay in four instalments over one year with no interest: or

- If the Special Charge for a property is over \$5,000 the payment may be made quarterly 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. 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 RBA Cash Rate, 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.

Any outstanding Special Charge Payment at the time of property must be made in full at settlement.

Ratepayers experiencing difficult financial circumstances may seek assistance in accordance with Council's Financial Hardship Policy.

## 9. GENDER IMPACT ASSESSMENT

In accordance with the Gender Equality Act 2020, a Gender Impact Assessment was not required in relation to the subject matter of this report.

## 10. DEFINITIONS

<b>Term</b>	<b>Definition</b>
The Act	Local Government Act 1989
MRSC	Macedon Ranges Shire Council
MERR	Manager Engineering and Resource Recovery
Council	The Macedon Ranges Shire Council is comprised of elected councillors led by the Mayor.
Policy	Special Charge Scheme for Infrastructure Works
Scheme	Refers to a special rate or special charge scheme
Special Charge Scheme	A Special Charge Scheme is defined by section 163 of the <i>Local Government Act 1989</i> as follows: A Council may declare a special rate, a special charge or a combination of both only for the purposes of: <ul style="list-style-type: none"> <li>• Defraying any expenses; or</li> </ul>

<b>Term</b>	<b>Definition</b>
	<ul style="list-style-type: none"> <li>• Repaying (with interest) any advance made to or debt incurred or loan raised by the Council.</li> </ul>
Works or Services	Refers to the functions or powers being exercised by Council for which it is proposed to levy a special charge or rate
Property	Refers to property in the form of land
RMA	Road Management Act 2004
Type of benefit	<p><b>Special benefit</b> - Benefit received by those property owners included in the scheme. Benefitting property owners pay the special benefit.</p> <p><b>Community benefit</b> - The wider community that is not receiving a Special Benefit in the proposed scheme. The community benefit is paid by Council.</p> <p><b>Total benefit</b> – Special Benefit plus Community Benefit.</p>
ADT	Average Daily Traffic

## 11. REFERENCES

- > Special Rates and Charges Ministerial Guidelines September 2004

## 12. RELATED POLICIES

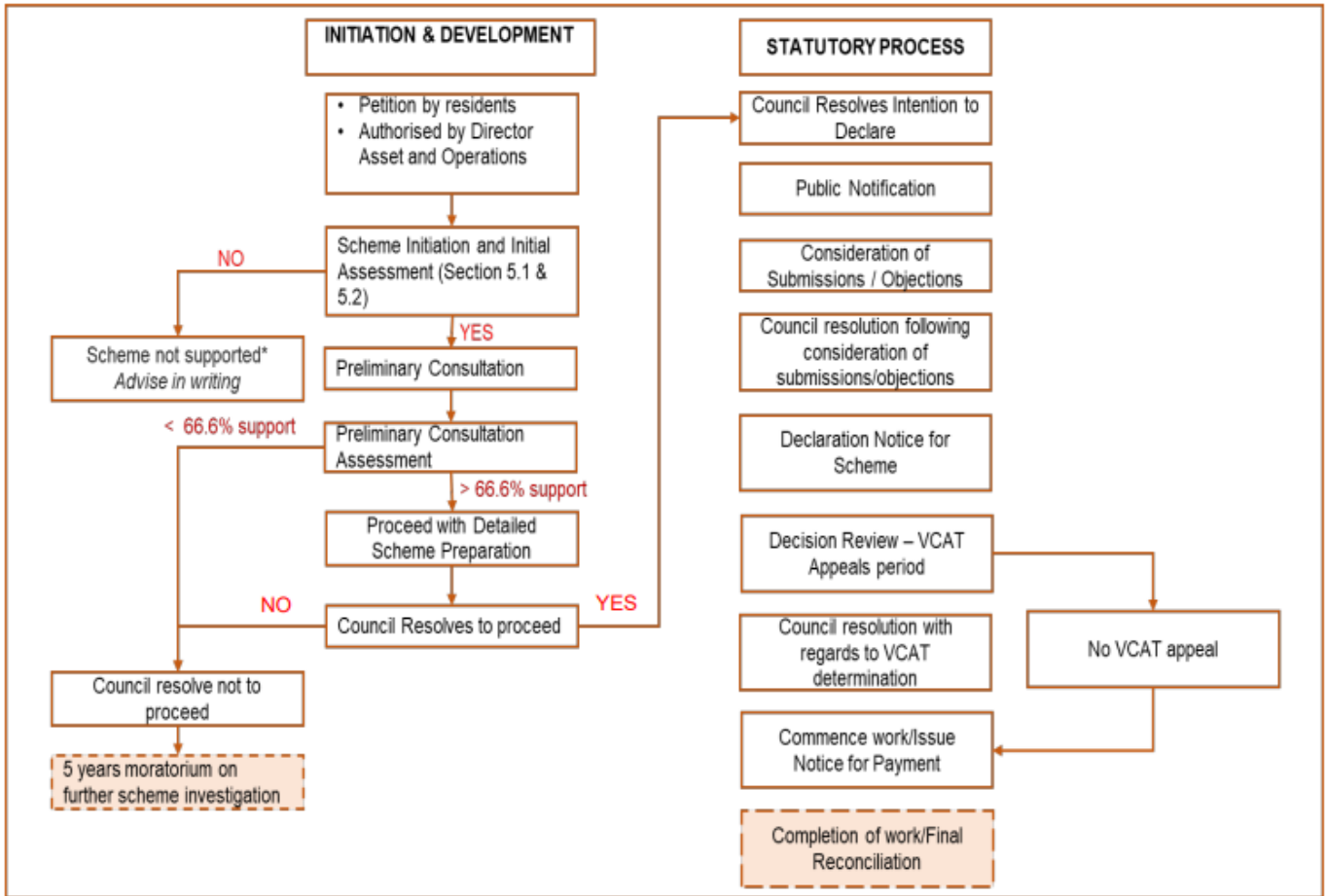
- > Road Management Plan
- > Asset Plan
- > Shire-Wide Footpath Plan
- > Capital Works Planning
- > Engineering Requirements for Infrastructure Construction
- > Infrastructure Design Manual

## 13. RELATED LEGISLATION

- > *Local Government Act 1989*
- > *Road Management Act 2007*

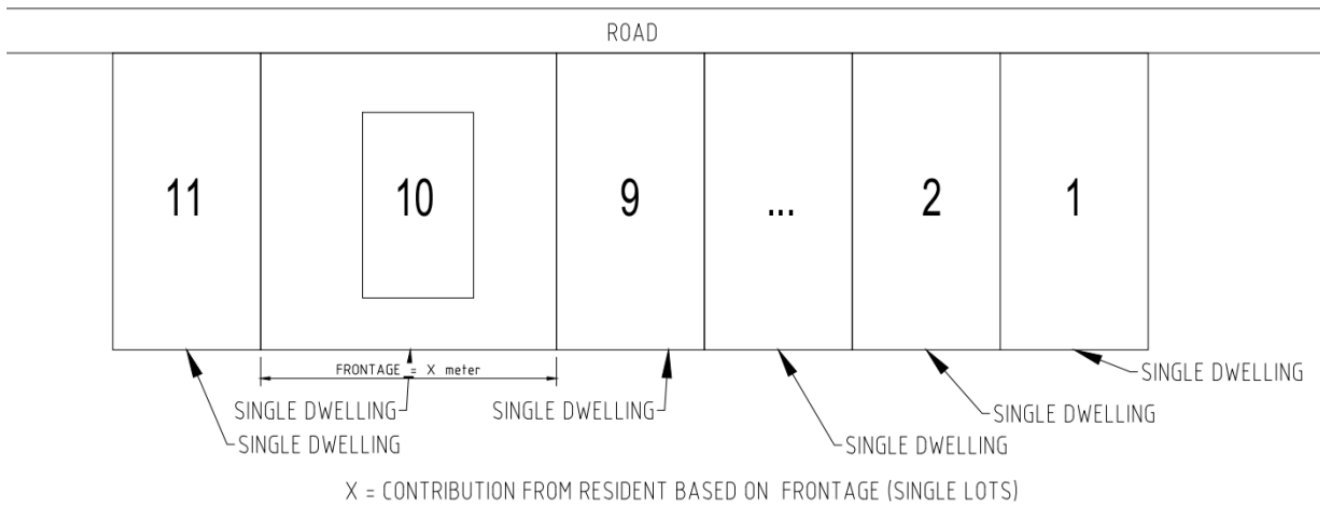


# Appendix 1 - Special Charge Scheme Flow Chat

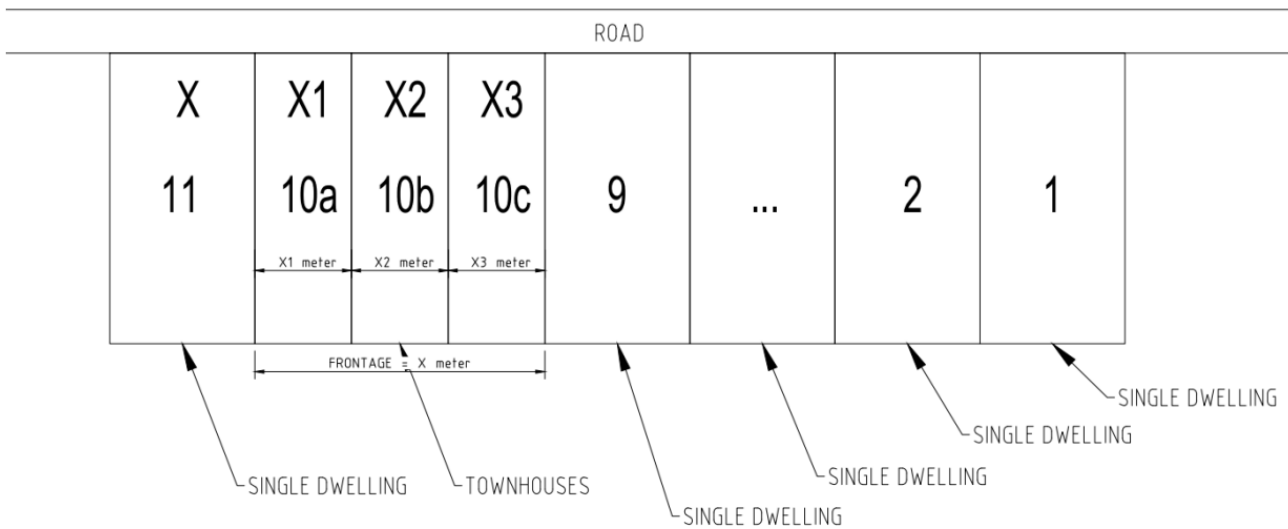


## Appendix 2 – Scenarios of Road Cost Apportionment

### SCENARIO 1 – SINGLE DWELLING



### SCENARIO 2 - TOWNHOUSES ON LOT 10



X TOWNHOUSES = X1 OR X2 OR X3 IF TOWNHOUSES HAVE INDIVIDUAL LOTS FROM THE ROAD CONSIDERED IN THE SCHEME CONTRIBUTION IS BASED ON LOT FRONTAGE

# SCENARIO 3 - UNITS

