

~~“8. Membership of Authority~~

~~The Grampians Wimmera Mallee Water Authority is to comprise of no more than 10 members appointed by the Minister.”.~~

~~Dated 25 August 2004~~

~~JOHN THWAITES MP
Minister for Water~~

~~Local Government Act 1989~~

~~KNOX CITY COUNCIL~~

~~Notice of Election~~

~~The date for the election under section 38(1) of the Local Government Act 1989 (the Act) to fill the extraordinary vacancy of 10 September 2004 for the Knox City Council’s Scott Ward is fixed in accordance with section 38(1A) of the Act to be 11 December 2004.~~

~~CANDY BROAD MLC
Minister for Local Government~~

Local Government Act 1989

SECTION 163(2C)

**Special Rates and Special Charges:
Calculating Maximum Total Levy
Ministerial Guideline**

INTRODUCTION

1. This Guideline is made under section 163(2C) of the **Local Government Act 1989** (the Act). It relates to the application of sections 163(2), 163(2A) and 163(2B) of the Act. It specifically addresses the calculation of the maximum total amount that may be levied as a special rate or special charge (referred to as the “*maximum total levy*”).
2. Some terminology used in this Guideline should be noted:
 - a. “**Scheme**” refers to a special rate or special charge scheme.
 - b. “**Works or services**” refers to the functions or powers being exercised by the Council for which it is proposed to levy a special rate or charge.
 - c. “**Property**” refers to property in the form of land.
3. The calculation of the *maximum total levy* requires the following:
 - a. Calculation of the “*total cost*” of the works or services,
 - b. Calculation of the “*benefit ratio*”, which depends on reasonable estimates of:
 - “*Total special benefits*” to properties included in the scheme,
 - “*Total special benefits*” to properties not included in the scheme (if any), and
 - “*Total community benefits*” (if any).

STEPS IN CALCULATION

4. The following steps apply to the calculation of the maximum total levy.
 - A. DEFINE PURPOSE
 - B. ENSURE COHERENCE
 - C. CALCULATE TOTAL COST
 - D. IDENTIFY SPECIAL BENEFICIARIES

- E. DETERMINE PROPERTIES TO INCLUDE
- F. ESTIMATE TOTAL SPECIAL BENEFITS
- G. ESTIMATE COMMUNITY BENEFITS
- H. CALCULATE THE "BENEFIT RATIO"
- I. CALCULATE THE MAXIMUM TOTAL LEVY

A. Define Purpose

- 5. The purpose, or purposes, of the proposed works or services should be clearly defined at the outset. The purpose should describe the reasons why the proposed works or services are proposed.
- 6. The description of the purpose would normally take account of the following:
 - a. Reasons why the works or services are considered necessary or appropriate, noting any relevant background information.
 - b. Who has proposed that the works or services be undertaken and including the following information;
 - If the works or services have been proposed by the council, the relevant council policy or resolution.
 - If the works or services were requested by a person or people other than the council, an indication of whether those people are proposed to be included in the scheme and what reasons they have given for requesting the works or services.
- 7. A scheme may serve multiple purposes and can be proposed by multiple parties.

B. Ensure coherence

- 8. For the purposes of calculating the maximum total levy, and therefore total cost and benefit ratio, the works or services for which the special rate or charge is proposed should have a natural coherence.
- 9. Proposed works or services can be considered to have a natural coherence if:
 - a. They will be physically or logically connected, or
 - b. They will provide special benefits, of a related nature, to a common, or overlapping, group of properties.

C. Calculate total cost

- 10. The "*total cost*" is the aggregate cost of defraying expenses related to providing the works or services and establishing the scheme.
- 11. The following should apply to the calculation of the "*total cost*":
 - a. Costs included in the *total cost* must be for purposes in section 163(1) of the Act, and
 - b. Costs included in the *total cost* may only be for expenses listed in section 163(6) of the Act, and
 - c. Costs included in the *total cost* should be based on actual expenses that have been incurred, or reasonable estimates of expenses expected to be incurred. (For example, any interest should be based on estimated actual interest costs rather than on prescribed penalty interest rates).
 - d. Costs included in the *total cost* may relate to known activities but not to activities that are purely speculative or hypothetical in nature. (For example, provision for incidental costs related to the proposed works might be included but not costs related to possible legal proceedings that may or may not occur)

D. Identify special beneficiaries

12. The council should identify, as far as possible, which properties will receive a special benefit from the proposed works or services. A “*special benefit*” is considered to be provided to a property if the proposed works or services will provide a benefit that is additional to or greater than the benefit to other properties.
13. It is important to note that, while special benefits are considered to accrue to properties, the actual measurable benefits are provided to the owners and/or occupiers of the properties (see also paragraph 23.a).
14. Special benefits should be benefits that are either tangible benefits to the owners or occupiers of the properties that are not remote, or they should be clear benefits to those owners or occupiers that were identified in the defined purpose of the works or services (paragraph 5). Types of benefits included as special benefits generally include services provided for the properties, identifiable improvements in physical or environmental amenity, improved access, improved safety or economic benefits.
15. A special benefit may be considered to exist if it would reasonably be expected to benefit the owners or occupiers of the property. It is not necessary for the benefit to be actually used by the particular owners or occupiers of a specified property at a particular time in order for a special benefit to be attributed to the property.

E. Determine properties to include

16. Having identified which properties will receive *special benefits*, the council must decide which properties to include in the scheme. The properties included in the scheme will be those that are required to pay the special rate or charge.
17. If a property will receive a *special benefit* but is not included in the scheme, the calculation of the benefit ratio will result in the council paying the share of costs related to the special benefits for those properties.
18. The council is not required to levy a special rate or charge on any or every property that will receive a *special benefit*. A property with a special benefit may be excluded from the scheme for any of the following reasons:
 - a. The council is unable to levy a special rate or charge on the property,
 - b. The owner of the property has already contributed to the costs of the works through a development levy,
 - c. The council considers that there are particular advantages for the municipality in excluding the property from the scheme,
 - d. The council considers that the special benefits for the property are marginal and would not warrant including the property in the scheme, or
 - e. Any other reason that the council considers appropriate.

F. Estimate total special benefits

19. Total special benefits can be defined to include two parts, as follows:
$$TSB = TSB(in) + TSB(out)$$
 - *TSB* is the estimated total special benefit for all properties that have been identified to receive a special benefit.
 - *TSB(in)* is the estimated total special benefit for those properties that the council proposes to include in the scheme.
 - *TSB(out)* is the estimated total special benefit for those properties with an identified special benefit that the council does not propose to include in the scheme.
20. In estimating the total special benefits for properties that will be included in the scheme, particular attention should be paid to:
 - a. The identified purpose of the proposed works or services, and
 - b. Specific benefits relevant to the type of works or services proposed.

21. There is no single or prescribed method for estimating total special benefits. However, whatever method is used, it is essential that the comparative weightings attributed to different types of benefits are reasonable and are applied consistently by a Council. It is also essential that consistent weightings are used between those properties that are included in the scheme and those that are not included.
22. It is particularly important to note that, while it may sometimes be useful to estimate special benefits on a property by property basis, this is not always necessary. The calculation of the benefit ratio only requires aggregate estimates of total special benefits for properties included in the scheme and for properties excluded from the scheme.
23. The following matters should be noted in calculating “total special benefits”
- a. While changes in property values are considered to be an indication that a special benefit exists, this is generally derived from benefits provided to the owners or occupiers of the property. To avoid double counting, changes in property values should not normally be included in the calculation of total special benefits.
 - b. Where the services or works proposed under a scheme include benefits to people who are servicing or accessing properties that are identified as having special benefits, the benefits to those people may be included as special benefits to the properties rather than as community benefits.

G. Estimate total community benefit

24. Before calculating the benefit ratio, a Council must consider if the proposed works or services will provide “community benefits”. Not all schemes have community benefits.
25. **Community benefits** are considered to exist where the works or services will provide tangible and direct benefits to people in the broader community. These will generally derive from the provision of facilities or services that are generally available to people, other than owners or occupiers of properties with special benefits.
26. Where there is a use or amenity value to people in the broader community that is a clear, tangible and direct, the Council should attribute a community benefit. The council should also attribute a community benefit where it identified in the defined purpose of the works or services (paragraph 5).
27. Councils should use a method of estimating community benefits that is reasonable and consistent in comparison to the estimates of special benefits. In making these estimates, care should be taken to avoid double counting. If a benefit is identified as a special benefit it should not also be counted as a community benefit.

H. Calculating the benefit ratio

28. The benefit ratio is calculated as follows:

$$\frac{TSB(in)}{TSB(in) + TSB(out) + TCB} = R$$

- **TSB(in)** is the estimated total special benefit for those properties that the council proposes to include in the scheme
- **TSB(out)** is the estimated total special benefit for those properties with an identified special benefit that the council does not propose to include in the scheme.
- **TCB** is the estimated total community benefit,
- **R** is the benefit ratio.

I. Calculating the Maximum Total Levy

29. Having calculated the total cost and the benefit ratio, the Council is required to calculate the maximum total levy, in accordance with section 163(2A) of the Act.

$$R \times C = S$$

- **R** is the benefit ratio
- **C** is the total cost
- **S** is the maximum total levy.

30. A council may not levy a special rate or charge to recover an amount that exceeds the maximum total levy. However, a council may decide to levy a lower amount.

SCHEME TYPES

31. The principles and processes outlined in this guideline will apply differently in different types of schemes recognising that complexities and variances occur with each scheme.
32. In general there are three main types of schemes:
- a. Works Schemes, that involve the construction of an item, or items of infrastructure,
 - b. Service Schemes, that provide a particular service or bundle of related services, and
 - c. Special Purpose Fund Schemes, where the monies raised by the special rate or charge go into a fund for a specified purpose and may include a mixture of works and/or services.

A. Works Schemes

33. Works schemes are schemes that involve the construction of an item, or items, of infrastructure, such as roads, (including road pavement, footpath, kerb and channel, etc) drains or car parks.
34. Benefits to be taken into account in a works scheme are usually related to improved amenity, safety, environment or usage value. As with all schemes, any benefits identified in the defined purpose should be taken into account in estimating total special benefits and total community benefit.
35. Consideration of the special benefits and community benefits should take account of changes in usage that are realistically expected to occur following the construction of the works.
- a. Future benefits should be limited to those that can arise under existing laws, planning schemes, permits and approvals.
 - b. Future benefits should be limited to benefits that may arise within reasonable timeframes.

ROADS

36. The construction of a road may generally include the various components of a road, such as the road pavement, kerb and channel, drains and drainage pits, nature strips and street trees, signage, line marking, traffic management devices, and footpaths.
37. When estimating the total special benefits associated with the construction of a road, a Council may take account of the following:
- a. The primary purpose for which the road is being constructed,
 - b. Improved access to properties by owners, occupiers, visitors and services,
 - c. Improved safety such as improved traffic delineation, improved sight distance, road surface and road width, reduced road flooding,
 - d. Improved physical or environmental amenity for the owners or occupiers, which may result from such works due to landscape treatments, removal of open drains and stagnant water, reduced property flooding, removal of dust,
 - e. Impact on any community facilities that may derive a special benefit from the works.

Where properties with special benefits have been excluded from the scheme, these factors should be applied consistently to those properties, wherever relevant.

38. When estimating the level of community benefit associated with the construction of a road, a Council should take account of:
- a. The primary purpose for which the road is being constructed,
 - b. Actual and expected usage of the constructed works, with a possible exception where the users are accessing or servicing properties with special benefits,
 - c. Expected impacts on projected road usage from factors such as growth, major development or traffic generators that are located outside of the scheme works,
 - d. Road function/classification and subsequent design standards and the extent that those standards are influenced by the degree of community usage of the works over and above that, may be attributed to properties within a scheme,
 - e. Extent of other works such as bicycle lanes and parking lanes, increasing the standard above that that would normally apply if only providing local property access.

DRAINS

39. In drainage schemes or works involving drainage infrastructure, the key criteria for assessing total special benefits includes an assessment of discharge and protection benefit to properties. This may relate to properties included in the scheme as well as properties not included in the scheme.
40. Factors that may be considered to provide a community benefit include improved drainage capacity, improved environment amenity due to such matters as water quality, reduction in erosion, reduction in flooding and improved health and hygiene.

B. Service Schemes

41. Service schemes are schemes that provide a particular service or bundle of related services that provide a special benefit.
42. Benefits to be taken into account in service schemes are primarily the special benefits to the direct users of the services. When estimating total special benefits and any community benefits for service schemes, the following consideration may apply:
- a. Who requested the service and what is its primary purpose?
 - b. Which group of people might be reasonably expected to pay for the service if it were commercially available?

RETAIL PROMOTIONS

43. Where services are provided for purpose of promoting or supporting business activities, such as in retail centres or shopping strips, the affected businesses would frequently be considered to be the main, or sole, beneficiaries. This will be particularly appropriate where the scheme has been proposed by business associations and the services are tailored to the needs of the affected businesses.
44. Any benefits for customers of the businesses that are included in the scheme would normally be included in the total special benefits to those businesses, in accordance with paragraph 23.b.

SERVICES GENERALLY AVAILABLE

45. Special rate and charge schemes are not generally used for services that are generally available to other people. This is because special rates and charges are only applicable where there is a special benefit.
46. However, there may be cases where a higher level of service is required for a particular area or group of properties and it may be appropriate to levy a special rate or charge. This might apply, for example, where ratepayers require maintenance of the road adjoining their

properties at a higher standard than is generally provided for roads of a similar type and classification.

47. In such cases, it is important to ensure that the special rate or charge does not apply to the portion of the service that is generally available to other people. Therefore, the calculation of the *maximum total levy*, the *total cost* and the *benefit ratio* should be restricted to that part of the service that is over and above the level of service generally available to other people.

C. Special Purpose Fund Schemes

48. Special purpose fund schemes are where the monies raised by the rate or charge go into a fund to be used for a specified purpose. In these schemes, the precise services and/or works are not fully specified in advance and a process is therefore established to allocate the funds raised. An example of this type of scheme could be a shopping centre promotion scheme, where a council directs and empowers a committee to allocate the funds.
49. Particular care should be taken when defining the purpose of special purpose fund schemes as the calculation of the *maximum total levy*, the *total cost* and the *benefit ratio* need to be based on the defined purpose.
50. When estimating total special benefits and any community benefits a council should consider the defined purpose of the scheme. It should also take account of advice in this guideline relevant to the types of works or services proposed or planned under the scheme.
51. It is essential that any funds raised under a special purpose fund scheme are utilised fully in accordance with the defined purpose of the scheme.

Dated 9 September 2004

Responsible Minister:
CANDY BROAD MLC
Minister for Local Government

Supreme Court Act 1986

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

~~Common Law Division~~

~~No. 7711 of 2001~~

~~IN THE MATTER of an application pursuant to section 21 of the **Supreme Court Act 1986**.~~

~~**BETWEEN:**~~

~~THE ATTORNEY GENERAL FOR THE STATE OF VICTORIA~~

~~Plaintiff~~

~~and~~

~~MICHAEL WESTON~~

~~Defendant~~

~~**GENERAL FORM OF ORDER**~~

~~JUDGE:~~

~~The Honourable Justice Whelan~~

~~DATE MADE:~~

~~27 August 2004~~

~~ORIGINATING PROCESS:~~

~~Originating Motion between Parties~~

~~HOW OBTAINED:~~

~~On Application by Summons filed 25 September 2001~~

~~ATTENDANCE:~~

~~Mr D. Masel of Counsel for the Plaintiff.~~

~~The Defendant appeared in person.~~

~~OTHER MATTERS:~~

~~This matter coming on to be heard before the Court on 9, 15 and 16 June 2004 and the Court having, on 16 June 2004 directed that this matter should stand for judgment and this matter standing for judgment accordingly.~~