Guidelines – Special Charge Schemes for Promotional Funds

MORNINGTON PENINSULA Shire

What are Special Charge Schemes for Promotional Funds

The Shire can, under Section 163 of the Local Government Act 1989, (the Act) raise a special rate or charge on properties within a defined geographical area for the purpose of defraying expenses.

Special Charge Schemes for Promotional Funds are a fee or ‘charge’ to Commercial properties within a defined boundary made under the Act to be used for marketing, promotion, township management, business development and other expenses associated with the encouragement of commerce. The fund works like a collective marketing scheme for a township.

The property owner is legally responsible for the charge however it can be and is usually, passed on to the property tenants/businesses via their lease agreements.

Mornington Peninsula Shire Council (MPSC) has implemented Special Charge Schemes (SCS) across a number of commercial precincts since 2001. Each Scheme lasts for a set number of years. The charge is invoiced and collected by the Shire on an annual basis for the term of the scheme. While the Shire collects the funds all funds collected are passed on to an associated Business/Trader group to spend under a management agreement.

Purpose of guidelines

These guidelines apply to associations/groups wishing to introduce a SCS for the first time as well as those wishing to renew an existing SCS.

The purpose of these guidelines is to:

- Provide a best practice model to guide the implementation of Special Charge Schemes and support their ongoing success
- Ensure compliance with the Local Government Act 1989 and Local Government Act 2020;
- Ensure that requirements for the implementation of Special Charge Schemes are applied consistently and fairly;
- Document requirements for the implementation of Special Charge Schemes that are subject to regular review, to ensure best practice is maintained.
- To ensure transparent and consistent practices are followed to maximise business consultation when considering a request to establish or renew a special charge scheme;

Instigating a Special Charge Scheme for Promotional Funds

Council will consider the Declaration and implementation of a Special Charge scheme for a Promotional Fund only at the request of an established Business Association/Trader group.

To meet the criteria of ‘established’ the requesting group must:

- Be a legally incorporated entity (Association)
- Have a full active committee: all office bearer positions plus general committee members.
- Be registered and active for a minimum of 2 years Show growth in annual financial memberships.

- Demonstrate successful activities/activations. For example events, social media, website grant applications, and other marketing activities
- Have active and regular communication with businesses. For example, emails, newsletter, mail drops, face to face visits, meetings, etc.

Special Charge Scheme for a Promotional Fund implementation process

There are three stages to the implementation process.

The first stage is **Pre-Scheme Consultation**. This stage is conducted by the requesting association and considered best practice. It is done to ensure there is understanding of, and support for, a special charge scheme from both the requesting group and those liable to pay the charge.

The second stage is a **Statutory Process** and is directed by the Local Government Act 1989. This stage is the process undertaken by Council to officially Declare a Scheme.

The third stage is **Ongoing Implementation**, which requires coordination and agreement between the authorised business association and Council.

The following identifies the steps required for each stage of the implementation of a special charge scheme and is also summarised in Table 1 on page 6.

1. Pre-Scheme Consultation

The association/trader group requesting a Special Charge Scheme must make their application in writing and include:

- A full business plan and budget.

The business plan should identify the strategic objectives of the association and the activities proposed to be undertaken to meet the objectives. The budget should indicate a cost for each of the proposed activities and include an allowance for the engagement of a co-ordinator to assist with the successful undertaking of the activities.

- The area/properties proposed to be included in the Special Charge Scheme

Associations must be able to demonstrate that properties included in the Scheme receive a special benefit from the activities proposed under the business plan and funded by the scheme. Shire officers can assist with mapping of properties so that it complies with the requirements of the Local Government Act

- The proposed charge per property

The charges should be based on what is required to meet the objectives of the business plan in line with the proposed budget. Shire officers can provide advice on how to determine a fee structure.

- The proposed term of the Special Charge Scheme

Terms of 5 years are preferrable as they allow for longer term Scheme objectives to be met, while allowing for appropriate re-consultation of those liable to pay the charge. However, terms of 3 -5 years will be considered.

- Details of consultation undertaken with businesses to be included in the Scheme.

This should include evidence that the supplied business plan and budget has been provided to businesses for comment.

- Copies of written support from business proposed to be included in the Scheme area – demonstrating min 70% support.

Evidence of written support should be in the form of support letters (form letters are acceptable) and must include the supporters name, signature, associated property address and business name.

Those associations looking to renew an existing Scheme need to supply the same information however, must also supply additional information and evidence as required under their Management Agreement for their existing Scheme.

This includes but is not limited to:

- A copy of a comprehensive evaluation of the existing Scheme.
- Evidence the association has set aside sufficient funds to operate over the renewal period and, where appropriate, for a consultant to assist with business planning as part of the renewal process.

2. Statutory process

The process outlined in legislation for the declaration of a special charge scheme – both new and renewal requests, must adhere to the same stages and minimum timeframes.

- Intention to Declare is made by Council by resolution at Council Meeting

A report is prepared in which Council is invited to resolve an intention to declare a Special Charge Scheme for a Promotional Fund. Should Council resolve an intention to declare the Special Charge, a public notice must be published and forwarded to persons who will be liable to pay the Special Charge in accordance with the requirements of the Act.

    - Public notice advertised.
    - Letters sent to property owners and tenants seeking submissions of support or objection.

- A minimum of period of 30 days is allowed for the receipt of submissions.

  Submissions received within the consultation period will be considered by Council. Submissions must be in writing, in response to a notice of intention to declare a special charge, and the submitter may request to be heard by a Committee of Council.

- Section 223 Committee meeting (if required)

  A person making a submission is entitled to request in the submission that the person wishes to appear in person, or to be represented by a person specified in in the submission, at a meeting to be heard in support of their submission. A Section 223 Committee meeting is the meeting to hear these requests.

- Declaration

  Council considers the written and verbal submissions that are before it at a Council meeting. Council may resolve to:
  - *Abandon the proposed special charge scheme - due to lack of support for example.*
  - *Amend the proposed special charge scheme - make amendments based on the submissions received.*
  - *Declare and proceed with the special charge scheme as proposed.*

  - Letters are sent to property owners and tenants advising of Councils decision.

  - Those liable to pay have 30 days to lodge an appeal with VCAT under LOCAL GOVERNMENT ACT 1989 - SECT 185

If no appeals are received by VCAT, Council will proceed to implement the special charge scheme, a management agreement will be signed between Council and the business association and invoices prepared.

If an appeal is made to VCAT there will be a delay in the implementation of the special charge scheme while VCAT determines the outcome. If the appeal is rejected or unsuccessful following a hearing by VCAT Council will then be able to proceed. Should an appeal be successful the outcome and how/if Council can proceed will be determined by VCAT.

3. Implementation and ongoing

Once a scheme is declared by Council, a Management Agreement is completed outlining the roles and legal, financial and administrative responsibilities of both parties.

For the managing Association, the responsibilities include but are not limited to:

- Maintenance and implementation of the business plan including the goals and objectives of the SCS and the key areas of expenditure. This must be reviewed at the end of each financial year in consultation with the Associations committee and eligible members.

- Copies of the business plan must be made available to eligible members upon request.
- Preparation of an annual budget detailing past income and expenditure and provide an indication of budgeted income and expenditure for the next financial year. Copies of the annual budget must be made available to eligible properties upon request.
- At the commencement of each financial year of the Scheme, a copy of the proposed business plan and budget is to be approved by the Shire. The approved business plan and budget then acts as authorisation for the release of Fund to the association.
- Providing annual audited financial statements and reports of the previous year's activities to Council promptly at the end of each financial year. Copies of the audited financial statements and reports must be made available to eligible properties upon request.
- Minutes of meetings, copies of newsletters, Co-ordinator reports and financial reports, along with other material distributed in connection with the Fund must be provided to Council to demonstrate compliance with the Management Agreement and enable quarterly payments.
- Must engage a co-ordinator to assist with administrative and marketing activities.

Councils commitments under the Management Agreement include but are not limited to:

- Council will absorb the costs of internally administering the Scheme as part of its commitment to stimulate local business development and employment opportunities;
- Council will carry any unpaid charges so that the Association can effectively budget expenditure of the full Charge annually;
- Council will not unreasonably interfere with expenditure decisions of the managing Association made in accordance with this Agreement, the approved business plan and budget
- Council has the right to access all records of the managing Association which relate to the Scheme;
- Council's nominated liaison member may attend the Associations meetings from time to time;

Council officers will prepare and send invoices for each rateable premises (except vacant land) used for retail and commercial purposes within the Special Charge Scheme boundary. Invoices will be sent to each property on a yearly basis for the term of the Special Charge Scheme, and inline with the requirements of the associated Management Agreement.

The owner of the property is the one primarily liable to pay the Special Charge. However, depending on the terms of the lease or other contractual arrangements where a property is being leased/rented, the property owner (or managing agent) may be able to pass the charge on to an occupier/tenant as an outgoing.

Exemptions

Once Declared the Special Charge Scheme fee is compulsory to pay unless the property meets one of the exemption criteria below.

- A single business using the same Australian Business Number and trading name is located in two or more contiguous rateable properties, then the business would only incur one charge; or
- A tenant is a charitable or not-for-profit organisation and provides a certificate of its charitable status, then the property would not incur a charge;
- A property is used solely for residential purposes.

Guidelines – Special Charge Schemes for Promotional Funds

MORNINGTON PENINSULA *Shire*

Table 1 Summary - Special Charge Scheme for a Promotional Fund implementation process

	Pre-Scheme Consultation	
1	Check that your Association/Group meets the requirements of an 'Active, Established' association	Page 1
2	Prepare a business plan and budget identifying the strategic objectives of the association/group and identify the activities proposed to be undertaken	Page 2
3	Identify the area/properties to be included within the Special Charge Scheme and the proposed charge for each property	Page 3
4	Undertake a consultation process with businesses proposed to be include in the Special Charge Scheme. Gather support forms to introduce a Promotional fund (Special Charge Scheme)	Page 3
5	Submit a formal request in writing to Mornington Peninsula Shire to Declare a Special Charge Scheme for a Promotional Fund - including supporting documentation	Pages 2
	Statutory Process	
6	A report is made to Council recommending their Intention to Declare a Special Charge for promotional Fund	Page 3
7	Councils Intention to Declare published by Public notice and by letter forwarded to property owners and business who may be liable to pay the special charge in accordance with the requirements of the Act seeking submissions of support or objection. Submission period minimum 30 days	Page 3
8	A report made to Council recommending they resolve to Declare a Special Charge for Promotional Fund.	Page 4
9	Council to send letters to all affected businesses and property owners informing of resolution of Council to Declare a Special Charge. Affected persons liable to pay have 30 days to appeal to the Victorian Civil and Administrative Tribunal (VCAT).	Page 4
	Ongoing Implementation	
10	If there are no appeals/no successful appeals to VCAT, Council will initiate Special Charge Scheme by entering into a management agreement with the requesting Association and sending invoices for each rateable premises (except vacant land) used for retail and commercial purposes within the Special Charge Scheme boundary	Page 4
11	The managing association works to implement the activities outlined in the business plan and budget, with assistance from Council where appropriate, and reports to Council as per the Management Agreement	Page 4
12	Invoices sent to property owners sent on a yearly basis for the term of the Special Charge Scheme, and in line with the requirements of the associated Management Agreement.	Page 5

Questions?

If you have any questions or would like further information about Special Charge Schemes for Promotional Funds you can contact the Economic Development Business and Industry Support Team at: **business@mornpen.vic.gov.au** or by calling **(03) 5950 1446**