

Strathbogie Shire Council Special Rate and Charge Scheme Policy

December 2022



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Special Rate and Charge Scheme Policy

Document ID:	13940
Effective Date:	15 February 2005
Last Review:	September 2021
Current Review:	December 2022
Date Adopted by Council:	13 December 2022
Next Scheduled Review Date:	December 2024
Responsible Officer:	Director Sustainable Infrastructure

PART 1 POLICY

1. PURPOSE

Special charge schemes are used to partially or completely fund new infrastructure works where there is a clear benefit to nearby properties, that is above and beyond the benefit to the general community. Council has historically used special charge schemes to provide infrastructure that otherwise would not have been built through rate revenue alone.

This policy is to be used as a strategic and procedural tool to assist and guide with the creation and implementation of all special charge schemes for infrastructure works projects in a fair, equitable and consistent manner.

2. POLICY STATEMENT

This policy is designed to assist Council and its ratepayers to develop an environment that meets the community's needs for access, amenity and safety. This policy operates within a legislative framework that recognises that there is a responsibility on those deriving a special benefit from the development of infrastructure to contribute to its development and operation. Following construction, it is generally Council's responsibility to maintain the asset to the appropriate standard.

This policy is based on, and consistent with, the Ministerial Guideline about special rates and charges. The objectives of the policy are:

- To implement the special charge scheme process in an effective manner that is fair to all.
- To maximise opportunities for community participation and consultation.
- To guide the financial contribution of Council.
- To guide the efficient and effective use of Council resources.
- To promote transparency, accountability and consistency in Council decision making.
- To ensure compliance with the requirements of the *Local Government Act 1989*.

3. APPLICATION OF THIS POLICY

This policy, together with referenced documents, covers special charge schemes for: -

- Road construction (full or partial e.g. kerb and channel),
- Footpath construction,
- Drainage works,
- Car park construction, and
- Other infrastructure as identified.

The 'Special Charge Scheme' legislation under Section 163 of the *Local Government Act 1989* (the Act 1989), enables a Council to recover the cost of the works from property owners/ratepayers, for works that will be of special benefit to them. The statutory process for special charge schemes is summarised in Figure 2, attached.

The new *Local Government Act 2020* (the Act 2020) is being introduced gradually over four tranches. At the time of writing this report, the provisions of the *Local Government Act 1989* remain in place in relation to council powers for Special Rate and Special Charge.

4. DEFINITIONS

Term	Meaning
Apportionment	The method of distributing the special charges amongst persons liable to pay (usually the owner of the land that receives the special benefit but can include a commercial tenant such as a business). It is calculated in a manner reasonable for all properties within a scheme. Apportionment does not include Council's contribution.
Council	means the Strathbogie Shire Council
Council Officer	A person who is appointed by the Chief Executive Officer to enable the functions of Council.
Declaration	Council considers a report to levy the relevant properties with a special charge. The report includes all the information from the intention to declare report, public submissions and Section 223 Committee report if applicable.
High Risk Works Schemes	Applies to poor infrastructure conditions (lose of shape; failed pavement areas) and/or structural failures (subsidence; slope instability), where these impact on the safety for their users.
Initiation	The preparatory step for the Shire in the development of a special charge scheme, where interest is identified by way of a request or an outcome of the relevant strategies.
Instigation	The step following initiation, where a Council report is prepared seeking endorsement for the preparation of a special charge scheme.
Intention to declare	The first step in the statutory process (section 163(1A) of the <i>Local Government Act 1989</i>), where Council considers a report which includes all relevant information on the proposed scheme.
Objection	<p>Correspondence in writing, from a person liable for a special charge, which expressly objects to a scheme. The right to object applies only to special charge schemes that are not drainage schemes required for reasons of public health and where Council is recovering more than two thirds of the total scheme cost (section 163B of the Act 1989).</p> <p>Please note: The right of objection is in addition to the right to make a submission. If a person is opposed to a scheme where the right to object does not apply, the person may make a submission stating their opposition.</p>

Property owner/Ratepayer	For the purposes of this policy, and unless stated otherwise, a reference to 'property owner' is a reference to the person(s) or entity (deceased estate, company, proprietor, business, etc.) that is responsible for paying a special charge (the ratepayer).
Public Health Drainage Scheme	Drainage Scheme comprise of a catchment-based drainage strategy outlining the functional designs of the relevant infrastructure required to service public health issues i.e. saturated soil (destabilising foundations), uncontrolled overland flow (causing sewer to overflow) and water ponding for extended periods.
Reasonable	In the context of the Act 1989 and special charge schemes, 'reasonable' is effectively a legal test defined by case law
Special Benefit	Applies to land rather than to a person. Special benefit occurs when land receives a benefit from the works that is over and above the benefit received by the general community. For example, members of the general community may use (and therefore generally benefit from) a road constructed by special charge scheme; however, the land adjacent the newly constructed road receives a special benefit due to the improved property access, drainage and property values, as those benefits do not apply to the broader community.
Special Charge	A monetary charge levied in relation to a parcel of land for the purposes of constructing a particular infrastructure project from which the land enjoys a special benefit.
Special Rate or Charge Scheme	A special charge scheme is a funding method that allows Council to recover the whole or a part of the cost of infrastructure works from businesses or property owners/ratepayers who will gain a special benefit from the works. A special charge scheme shall be in accordance with the Special Rate and Special Charge provisions of the Local Government Act.
Submission	Correspondence in writing, from any person, in response to Council's public notice of intention to declare a special charge (section 163A of the Act 1989). The submission may be (completely, partially or a combination of) in favour of, neutral to, opposed to, or provide comment on any aspect of the special charge scheme proposal.
VCAT	The Victorian Civil and Administrative Tribunal – a tribunal that hears and decides civil and administrative legal cases in Victoria.

5. RELATED POLICIES AND LEGISLATION

The following Council, State, regional and national plans and policies are relevant to this policy under each subtitle. Please use the full title and also include a hotlink to the document for ease of reference.

- *Local Government Act 1989* particularly (but not limited to) sections:
 - 163. Special rate and special charge
 - 163A. Submissions concerning special rates and charges
 - 163B. Objection Process relating to certain special rates and charges
 - 164. Discontinuance of the works and projects for a special rate or special charge
 - 165. Receipt of excess money
 - 166. Variation of special rate or special charge
 - 185. Application to VCAT
 - 185AA. Application for declaration
 - 223. Right to make submission
 -
- *Local Government Act 2020* particularly sections:
 - 55. Community engagement policy
 - 56. The community engagement principles
- *Planning and Environment Act 1987*
- Strathbogie Shire Asset Management Policy
- Strathbogie Shire Community Engagement Strategy
- Strathbogie Shire Procurement Policy
- Strathbogie Shire Rates and Charges Collection and Hardship Policy
- Special Rates and Charges Ministerial Guidelines including worked examples – September 2004
- Various determinations by the Victorian Civil and Administrative Tribunal and other Courts

6. POLICY REVIEW

Council may review this policy at any time and at least two years from the date of adoption.

Minor amendments to the policy may be authorised by the CEO at any time where such changes do not alter the substance of the policy (e.g. a change to the name of a related document, or a change in legislation).

7. CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 AND THE EQUAL OPPORTUNITY ACT 2010

The Council acknowledges the legal responsibility to comply with the *Charter of Human Rights and Responsibilities Act 2006* and the *Equal Opportunity Act 2010*. The *Charter of Human Rights and Responsibilities Act 2006* is designed to protect the fundamental rights and freedoms of citizens. The Charter gives legal protection to 20 fundamental human rights under four key values that include freedom, respect, equality and dignity.

8. FEEDBACK

Council staff and community may provide feedback about this document by emailing info@strathbogie.vic.gov.au.

PART TWO PROCEDURE

9.1 SCHEME INITIATION

A special charge scheme may be proposed by one of two streams, as described below. The sequence of events for each stream is different; however they both contain the same consultation steps – see Figure 1, attached.

9.1.1 Council Initiated

The special charge scheme process may be recommended by Council in accordance with their relevant infrastructure strategy.

A special charge scheme may also be initiated by Council where the proposed works are not identified in an infrastructure strategy but are otherwise identified as a priority for construction through instances of public safety or reasonable amenity.

The pre-scheme process is as follows: -

1. Instigation report to Council.
2. Develop concept plans, cost estimates, draft apportionment.
3. Conduct property owner/ratepayer information sessions.
4. Survey of property owners/ratepayers (other than for Public Health Drainage or High-Risk Works schemes). The survey results are not binding. Council may choose to proceed without majority support if it considers there are compelling reasons relating to issues such as safety, health, public benefit, or amenity.
5. Begin statutory process - Intention to Declare a Special Charge Scheme report to Council.

9.1.2 Community Initiated

The special charge scheme process may be initiated after receiving a request from a member of the public, residents/ratepayers within the area, businesses, commercial property owners/ratepayers and/or other interested and affected parties.

Following a request from the community to initiate a special charge scheme, a strong level of support by those affected by the proposed works would need to be obtained by council, this would be demonstrated through individual emails or letters being sent to council.

The pre-scheme process is as follows: -

1. Council receives the requests for works from the community.
2. Survey of property owners/ratepayers. In order to move to the next stage, 60% of survey respondents need to be in favour of the scheme proposal.
3. Instigation report to Council.
4. Develop concept plans, cost estimates, draft apportionment.
5. Property owner/ratepayers information sessions.
6. Begin statutory process - Intention to Declare a Special Charge Scheme report to Council.

9.2. INSTIGATION

The Instigation step in a special charge scheme includes a report to Council that considers progressing with the scheme proposal. The content of the Instigation report will differ slightly between Council Initiated and Community Initiated schemes due to the difference in the pre-scheme processes.

From time to time, infrastructure works may be required to address issues that pose an unacceptably high risk to either the general public or to individual property owners/ratepayers. Examples of high-risk issues include but are not limited to; flooding, pooling of stormwater runoff, or slope instability (i.e. risk of landslide). Such issues would typically be addressed by improving drainage and road infrastructure that may still be appropriately funded by a special charge scheme.

Officers may recommend that the proposed works be declared a Public Health Drainage Scheme or High-Risk Works Scheme for the purposes of this policy.

If Council agrees to instigate a special charge scheme, Officers will develop and provide affected parties with: -

- Conceptual designs
- Scheme procedures and implementation processes
- Apportionment of costs to all included properties
- Estimated engineering and administration costs, and
- Information on how to make a submission and/or objection.

Should Council decide not to proceed with a special charge scheme then the property owners/ratepayers will be advised.

9.2.1 Council Initiated

Instigation reports for Council Initiated schemes are governed by the relevant Infrastructure Strategy or a previous decision made by council in relation to infrastructure works.

The report will usually include the scope of proposed works, indicative costs, Council's contribution and information regarding a Public Health Drainage or High-Risk Works declaration (where applicable).

9.2.2 Community Initiated

Instigation reports for Community Initiated schemes will include the results of the property owner/ratepayer survey, the scope of proposed works, and indicative costs.

9.3. INTENTION TO DECLARE

A report is prepared in which Council is invited to consider to resolve an intention to declare a special charge scheme.

Should Council resolve an intention to declare a special charge scheme, 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 1989.

The report will also indicate the manner in which Council proposes to deal with community engagement under sections 55 and 56 of the *Local Government Act 2020* and any submissions it receives under section 223 of the Act 1989.

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.

In the case where no submissions have been lodged, Council may resolve to proceed to declare the special charge scheme.

Submissions received after the closing date may not be accepted. Correspondence received after a report to a Section 223 Committee has been finalised will not be accepted as a submission for reporting or analysis purposes. This does not limit a person's normal right to correspond with councillors.

9.3.1 Apportionment Principles

The special charge apportioned to a land parcel, is not intended to be a reflection of the special benefit that property receives, nor is it required to be tied to the level of special benefit. Each special charge scheme stands alone when considering the apportionment criteria and distribution method; what is considered a reasonable apportionment for one scheme may be considered unreasonable if applied to another scheme.

The Act 1989 does not provide details on how costs are to be apportioned. It only requires that a property must receive a special benefit from the works for a special charge to be levied. It is therefore up to Council to determine an appropriate method of apportionment provided that the apportionment is reasonable.

In determining the apportionment of costs for each property, Council may consider frontage, area, benefit, existing or potential access, town planning zoning, and any other criteria considered relevant and appropriate for a particular scheme.

Council will declare a preferred method of apportionment when resolving an intention to declare a special charge scheme. To ensure the method is appropriate, the apportionment should generally be in line with previous determinations of the Victorian Civil and Administrative Tribunal (VCAT).

9.3.2 Scope of Works

The scope of works is largely dependent on the location of each scheme, but generally includes: all works, materials, charges, overheads and costs to build the infrastructure, including project management, design, traffic management, nature strip works, drainage works, kerb and channel, street furniture, landscaping services, lighting etc.

9.3.3 Council Contribution

When proposed Infrastructure would provide a comparable benefit for both the broader community and local properties, these schemes would be implemented on the basis of property owners/ratepayers contributing 50% of the total scheme cost.

Where Infrastructure provides some benefit to the broader community but is predominantly beneficial to the properties within the scheme, these schemes would be

implemented on the basis of property owners/ratepayers contributing 65% of the total scheme cost.

Infrastructure that has little or no broader community benefit, Councils' contribution shall be zero, typically limited to Community initiated special charge schemes and is subject to the support criteria outlined in clause 5.1 Scheme Initiation. These schemes will usually trigger the right to object.

Councils' contribution may be guided by the relevant infrastructure strategy and the broader community benefit. Should Council be required to contribute to the special charge scheme, the timing of the project will be dependent on sufficient funds being available in the Capital Works Program.

9.3.4 Affordability Measures

From time to time, there may be special charge scheme proposals where the special charge to property owners/ratepayers is unusually high. This may occur in schemes that include large Crown land parcels such as state or national parks (which cannot be charged – section 221 of the Act 1989), or where construction costs are unusually high due to difficult terrain. Council will contribute an amount in addition to its normal contribution (in clause 5.3.3 above) to improve the affordability of the special charges for all property owners/ratepayers in such schemes.

9.4. DECLARATION

Following the intention to declare, Council considers the written and verbal submissions that are before it. Reports to Council do not make any assumptions with regard to a property owner/ratepayer who has not made a submission. Council may resolve to: -

- Abandon the proposed special charge scheme by not giving effect to the proposed declaration to levy the special charge and not proceeding with the works, or
- Abandon the proposed special charge scheme and prepare a new special charge scheme, due to the need to significantly modify the original scheme; or
- Proceed to declare the proposed special charge scheme, with or without variations to the original proposal.

All persons who have made a submission and all persons affected by the special charge scheme must be advised of Council's decisions and be provided with the reasons for the decision.

Should Council resolve to declare the special charge scheme, it must send a notice to those persons who are required to pay the special charge in accordance with section 163(4) of the Act 1989. Council's resolution to declare a special charge must include: -

- The wards, uses or areas for which the special rate or special charge is declared; and
- A description of the function to be performed or the power to be exercised; and
- The total cost of the performance of the function or the exercise of the power; and
- The total amount of the special rates and special charges to be levied; and

- The land in relation to which the special rate or special charge is declared; and
- The manner in which the special rate or special charge will be assessed and levied; and
- Details of the period for which the special rate or special charge will remain in force.

9.4.1 Appeal

Persons liable to pay a special charge have the right to appeal to VCAT for review of Council's decision on merits or administrative grounds. Applications for a merits review must be limited to the grounds defined in section 185(2)(b) of the Act 1989. All applications will be administered by VCAT and must be submitted within 30 days of the notice levying the special charge being issued. Applications for an administrative law review are made under section 185AA of the Act 1989 and should also be submitted within 30 days of the notice levying the special charge being issued.

9.4.2 Implementation Process

The construction of works for the special charge scheme must proceed in accordance with the Procurement Policy. Following the engagement of a contractor by Council, the community is to be advised that works will be undertaken, including details of the approximate timing of works, contact details for the contractor and the Council Officer supervising the works.

Following the decision of Council to proceed with the scheme and its implementation through the procurement process, a Notice Requiring Payment will be served on all contributors indicating all of the relevant details.

The notice shall clearly indicate that this request for payment is based on the estimated total cost of the scheme.

At the same time the property database shall be updated so that all new Land Information Certificates show the potential for a further charge on the property after finalisation.

Owners with a demonstrated and genuine financial hardship are to be considered on a case-by-case basis in accordance with Council's Rates and Charges Collection and Hardship Policy.

9.4.3 Instalment Plans

Council shall allow all contributors to pay their special charge in quarterly instalments. Paying by instalments will accrue interest charged at the Commonwealth Bank 5-year Fixed Mortgage Interest Rate at the date of declaration of the Scheme, plus 1% for administration costs.

The length of a special charge payment plan is determined by the value of the principal special charge according to the below table. The payment plan term begins when the first Notice Requiring Payment falls due.

Special Charge	Maximum Payment Plan Term
Up to \$5,000	Four (4) years
\$5,000 to \$15,000	Seven (7) years
\$15,000 to \$25,000	12 years
Greater than \$25,000	15 years

9.4.4 Discontinuance of a Declared Scheme

Once a special charge scheme has been declared, it may be discontinued only by a resolution of Council (under section 164 the Act 1989). Council may exercise its discretion to discontinue a scheme in the absence of an officer report and recommendation.

Officers may recommend that Council discontinue a special charge scheme in circumstances where: -

- there are engineering concerns requiring additional funding that cannot be otherwise absorbed in Council's Capital Works Budget
- project conditions change such that sections or elements of the works are no longer required (i.e. due to construction by a developer or other party/authority); and
- funding conditions change (i.e. grant monies are secured that negate the need for a special charge).

9.5. FINALISATION

Special charge schemes shall be reconciled upon practical completion of the contracted works for the scheme.

Once reconciled, a report to Council shall include the following: -

- that the works are complete and the costs are finalised,
- that the final apportioned costs are presented for adoption by Council, and
- where any variation has occurred between the estimate (at the time of the intention to declare) and the final apportioned cost, the detail of such variation.

Persons liable for a special charge will be liable for an increase of no more than 5% of the estimated special charge. Council will bear the balance of any variation in excess of 5% of the total scheme estimated cost apportioned to properties.

If a variation to a special charge result in a reduction of the estimated charge, Council will: -

- If the special charge has not been paid in full (i.e. is subject to a payment plan), reduce the balance of the charge owing, or
- If the special charge has been paid in full, refund the variation to the current owners of the relevant land. In accordance with section 165 of the Act 1989, Council does not have discretion to refund a special charge variation to any other person (including circumstances where a previous owner has paid the estimated special charge).

In any case where the special charge is varied by any amount, notice is required to be given to all affected parties pursuant to section 166 (2) of the Act 1989.

Figure 1 – Consultation Process Flow Chart

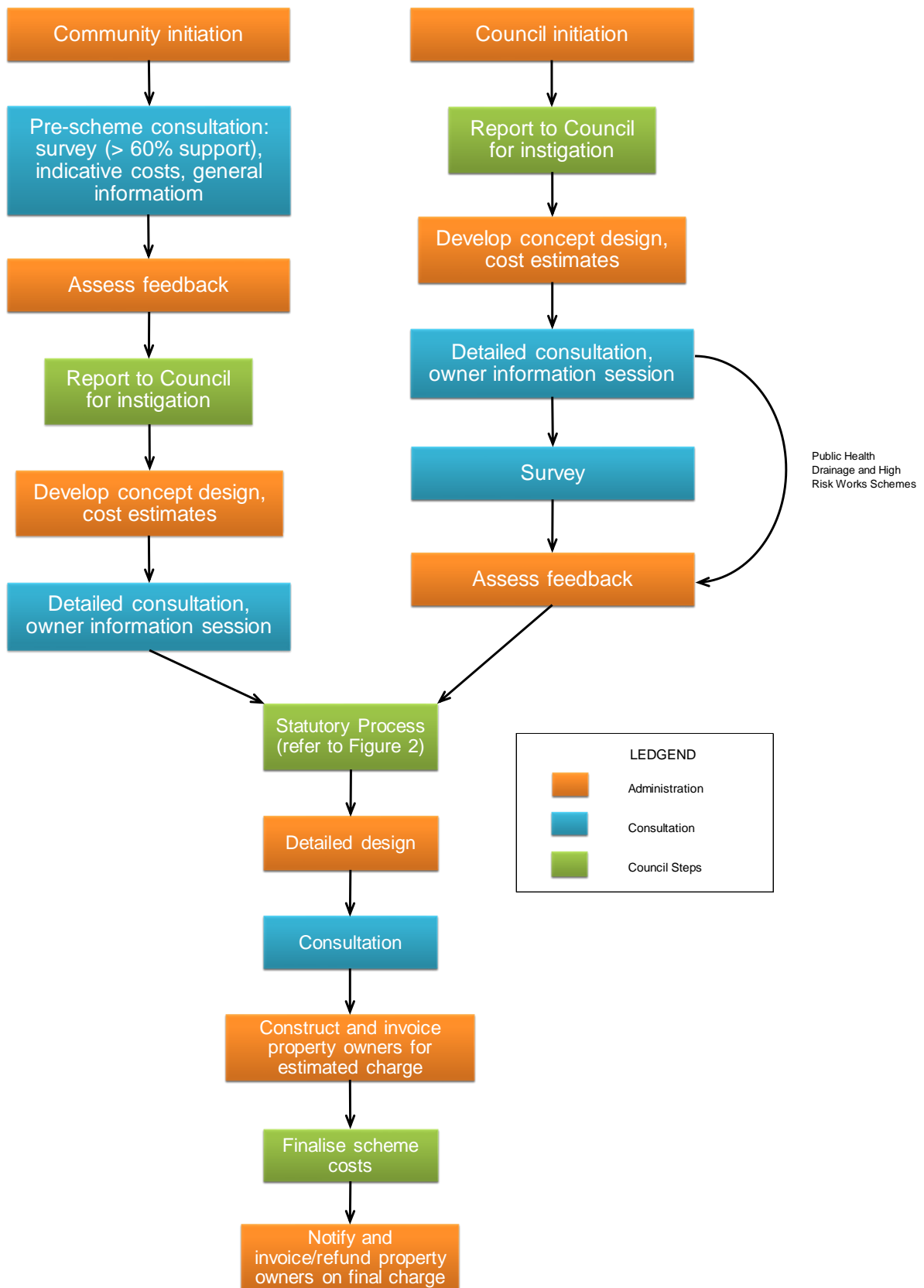


Figure 2 – Statutory Process Flow Chart

