

Planning-related disputes under the *Local Government Act 1989*

Planning and Environment Division FACT SHEET

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This fact sheet contains general information and should not be considered as legal advice. Seek professional advice if you are unsure about your rights, and be aware that the law may change.

Local government cases that VCAT can hear as a ‘planning dispute’

The Planning and Environment Division at VCAT deals with a range of planning disputes relating to the development and use of land.

The planning-related disputes that VCAT can hear under the *Local Government Act 1989* concern special rates and charges. VCAT can:

- review a decision of a council to impose a special rate or charge on an owner or occupier of land (section 185).
- make a declaration concerning the validity of a council decision to impose a special rate or charge (section 185AA).

Local government cases that VCAT doesn’t deal with as a ‘planning dispute’

The *Local Government Act 1989* deals with many other matters relating to the powers and operation of councils. These include:

- councillor conduct (dealt with by VCAT’s Review and Regulation List).
- differential rating and land classification (dealt with by VCAT’s Land Valuation List).

More information about these other matters is available on VCAT’s website. Be aware that not all decisions of a council under the *Local*

Government Act 1989 are reviewable by VCAT.

What are special rates and charges?

A special rate or charge is an amount charged by a council (in addition to normal council rates) to a group of land owners or occupiers to cover the cost of works or services that provide a special benefit to their land. Examples include street or footpath construction, drainage, and shopping-strip trader schemes.

‘Special benefit’ is commonly assessed by reference to the benefit to a person’s land rather than to the person paying the charge. Each person seeking to review a special rate or charge must separately establish the case by reference to that person’s land.

Who can apply?

Only a person upon whom a special rate or charge has been imposed can apply to VCAT to review the council decision.

Reasons for applying

A person cannot apply for a review just because they do not agree with the proposed special rate or charge, or do not want or need the works or services that it will fund. The decision to undertake the works or services is a matter for the council, and VCAT is not able to generally review this.

A person can only apply for a review of the council decision on the grounds that:

- the special rate or charge will not provide a ‘special benefit’ to that person.

- the apportionment of the special rate or charge between those liable to pay it is unreasonable.
- the works or services funded by the special rate or charge are inconsistent with relevant policies or specific objectives in the planning scheme for the area.
- if there are no relevant policies or objectives in the planning scheme, that the works or services are unnecessary, unreasonable, excessive, insufficient, unsuitable or costly having regard to the locality or environment and the nature of the works proposed.

The last two grounds are alternatives. Be aware that the last ground can only be raised if there are no relevant policies or objectives in the planning scheme.

A person can apply for a declaration about the validity of a council decision to impose a special rate or charge. This is a special type of case that can only be heard by a presidential member of VCAT. A person seeking a declaration usually needs to show that there is a material defect in the council's statutory process in making its decision, such as a failure to provide the required statutory notice.

Are there time limits?

An application for review must be made within 30 days after the issue of a notice to that person of the special rate or charge.

An application for a declaration does not have a specified time limit, but VCAT will be unlikely to make a declaration unless an application is made as soon as practicable after the council issued the notice to impose the special rate or charge.

What is the form of application?

To make an application, you must use the Planning and Environment Division 'General form of application'. A copy of the application form is available on VCAT's website.

Be aware that fees may apply. Information about application fees and hearing fees is available on VCAT's website.

What can VCAT decide?

On an application for review, VCAT may:

- vary the special rate or charge in relation to the person making the application.
- set aside the whole special rate or charge scheme (except on the ground of 'special benefit')
- dismiss the application and confirm the special rate or charge.

On an application for a declaration, VCAT may make any declaration that it considers appropriate. This may include a declaration that the council decision was invalid, which would lead to the whole special rate or charge scheme being set aside.

In reaching its decision on an application for review or declaration, VCAT must take into account the relevant planning scheme, and any amendment to the scheme already adopted by the council.

Further information

Cases about special rates and charges are often complex, and some of the terms used in the *Local Government Act 1989* have particular meanings given to them in the Act or by the courts.

For further information:

- carefully read the decision letter and other documents sent to you by the council, and/or visit your council's website.
- look at the decisions in other similar cases decided by VCAT. VCAT decisions can be found on the Austlii website. You may need to enter a search term (e.g. 'special benefit' or the name and section of the Act) to find the most relevant cases.