

Fair Go Rates system – Applying for a higher cap

Guidance for councils 2022–23

December 2021



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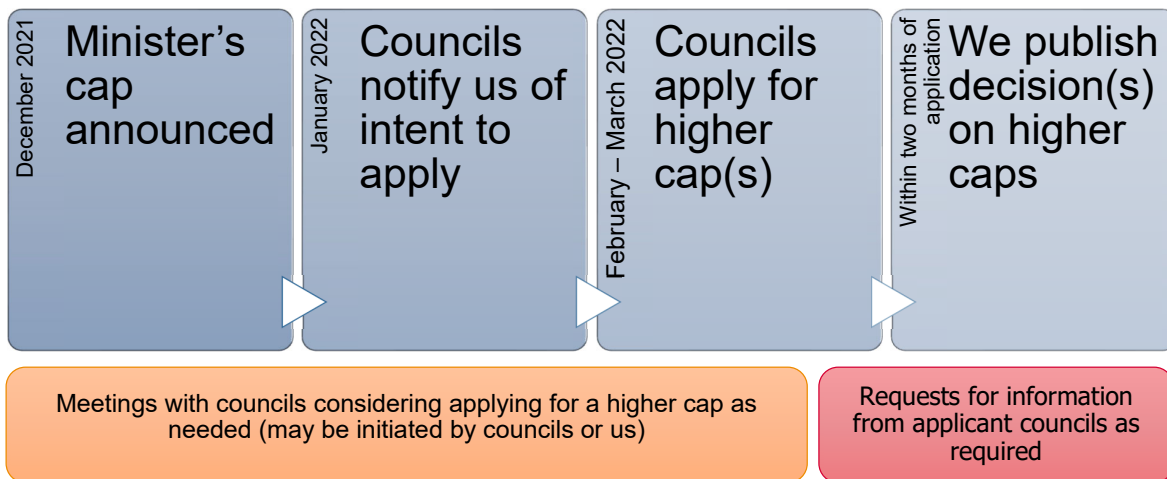
About this document

This document explains the information we expect from Victorian councils applying for a higher rate cap for the 2022–23 rating year and sets out the process to follow.

Each year, the Minister for Local Government sets the average rate cap — that is, a maximum percentage increase allowed in councils' average rates for the forthcoming financial year.¹ The minister can set a cap for all councils, a group of councils or a single council. If this average rate cap appears insufficient for the needs of any council, it can apply to us for a higher percentage.

Part 8A of the Local Government Act 1989 (the 1989 Act) sets this up as the Fair Go Rates system. The 1989 Act, together with sections 10 and 10E of the Essential Services Commission Act 2001, also defines our roles in administering Fair Go Rates. Those two Acts, as amended, remain in force. The new Local Government Act 2020 (the 2020 Act) sets out new and changed requirements for planning, procurement, community engagement, and service delivery.

The higher cap process



To prepare an application and show that we should approve a higher cap, a council should clearly explain its reasons and how it has addressed each of the regulatory matters as required. It should support these by including information on planning, financial and asset management, community

¹ In references to capping in this document, unless otherwise stated, 'rates' should be understood to mean average rates including general rates and municipal charges and any other prescribed rates or charges on rateable properties. Also, see Footnote 2.

engagement and so forth. Section 3.4 of this guidance describes supporting material we would expect to see a council provide in support of an application.

When we examine the information that a council sends, our primary aim is not to assess their form and presentation or their compliance with general regulatory requirements. Rather, we want to see how they demonstrate that:

- in applying for the higher cap, the council has addressed the matters specified in the 1989 Act
- in approving the higher cap, we may promote the stated purposes of the Fair Go Rates system.

To help councils plan for and make such applications, we are publishing this guidance. It reflects what we have learnt from assessing past applications, along with feedback received from the sector, our technical working groups and ratepayers. The underlying standards and our approach to assessment are unchanged from previous years. To make it easier to refer to our guidance, some material does appear in more than one place.

Appendix 1 gives an overview of the system and our role. Appendix 2 explains in more detail how the rate cap works, and Appendix 3 summarises our view of financial planning. This document offers general advice or guidance only.² It aims to help councils understand how we interpret relevant regulatory requirements. By following this advice or guidance, councils may be better able to present the information to support their applications. Separate guidance on councils' compliance and reporting requirements relating to the Fair Go Rates system is also available.³

However, councils should not read this document as a set of fixed rules that would secure the approval of an application in all circumstances. As the Fair Go Rates system matures, or as legislation changes, we will update and refine this guidance as necessary. Readers' feedback on the document is welcome and will help us to improve the guidance.

Table 1 shows the key dates and timelines for the operation of the Fair Go Rates system for the 2022–23 rating year.

² This document is issued under s. 11 of the Essential Service Commission Act 2001 in connection with our functions under s. 10E of that Act and s. 185E(5)(c) of the Local Government Act 1989. This document is not intended to be a final statement. We may provide further directions, advice and guidance in relation to particular applications or issue guidelines under the Local Government Act 1989.

³ See 'Fair Go Rates system – compliance monitoring and reporting, guidance for councils 2021–22', which provides details on how to comply with the average rate cap set by the minister — or any higher cap approved by us — and how to report to us on their compliance. Updated guidance on councils' compliance relating to the 2022–23 rating year will be made available in early 2022 on our website <https://www.esc.vic.gov.au/local-government/council-compliance-rate-caps/guidance-help-councils-comply-rate-caps#tabs-container2>.

Table 1 Timelines for the 2022–23 rating year

Fair Go Rates system — key dates	Timeframe
Base year	1 July 2021 – 30 June 2022
The minister announces the rate cap	By 31 December 2021 ^a
A council seeking approval for a higher cap notifies us of intention to apply	By 31 January 2022
A council sends application for a higher cap, with budget baseline information	1 February – 31 March 2022
We assess council applications	February – May 2022
We notify councils of decisions	Within two months of receiving application
Capped year	1 July 2022 – 30 June 2023
Councils formally adopt budget no later than	June 2022
All councils send annual compliance information	By 30 September 2022
We publish compliance report	Late 2022

^a Unless an alternative date is determined by the minister and published in the Government Gazette.

Communicating with us

Council staff can reach us at the local government team to respond to queries or requests for information, by email: localgovernment@esc.vic.gov.au or by telephone: 03 9032 1300 or 1300 664 969.

All councils can expect to receive general information, enquiries and instructions from us about complying with the minister's cap or an approved higher cap, or applying for a higher cap. We ask councils to nominate and maintain a key contact for these communications. We will also copy communications to the chief executive officer and the records area of each council.

1. Our expectations of higher cap applications

Higher cap applications should align with the purposes of the Fair Go Rates system and address the six legislative matters as outlined in the Local Government Act 1989.

The Fair Go Rates system allows Victorian councils to apply to us for higher caps (for up to four years) above the cap set by the minister.

1.1. Purposes of the Fair Go Rates system

An application should show that, by approving it, we shall achieve our statutory objective, which is to promote the purposes of the Fair Go Rates system, as set out in Box 1.1.⁴

Box 1.1 The purposes of the Fair Go Rates system

The purposes of this Part are—

- (a) to promote the long-term interests of ratepayers and the community in relation to sustainable outcomes in the delivery of services and critical infrastructure; and
- (b) to ensure that a Council has the financial capacity to perform its duties and functions and exercise its powers.

Source: Section 185A, Local Government Act 1989.

1.2. Legislative matters

Section 185E of the 1989 Act sets out six legislative matters that an application must address, as shown in Box 1.2 below. These matters largely reflect or reinforce statutory requirements on all councils to ensure effective planning, budgeting, financial management and community engagement. By meeting these requirements, councils should be able to show they are efficient, and the services they deliver provide good value for money to their ratepayers.

The process for applying for higher caps provides additional independent scrutiny to ensure councils, when levying higher rates on their ratepayers, adhere to those principles and obligations.

⁴ Section 10E(7) of the Essential Services Commission Act 2001 states our objective is to promote these purposes in the Local Government Act 1989.

Box 1.2 Six matters an application for a higher cap must specify

An application under this section of the Act must specify —

- (a) a proposed higher cap for each specified financial year; and
- (b) the reasons for which the Council seeks the higher cap; and
- (c) how the views of ratepayers and the community have been taken into account in proposing the higher cap; and
- (d) how the higher cap is an efficient use of Council resources and represents value for money; and
- (e) whether consideration has been given to reprioritising proposed expenditure and alternative funding options and why those options are not adequate; and
- (f) that the assumptions and proposals in the application are consistent with the Council's long-term strategy and financial management policies set out in the Council's planning documents and annual budget.

Source: Section 185E(3) Local Government Act 1989.

In assessing applications, we will have regard to each of these matters and any other relevant factors. We will assess each application on its merits and determine the appropriateness of a higher cap, having regard to all relevant factors and the unique circumstances of the applicant council.

1.2.1. Applications should demonstrate a long-term need for additional revenue

As we interpret the purposes and legislative matters of the Fair Go Rates system, we should generally only approve higher caps when a council can demonstrate a long-term funding need that justifies a higher cap. A council should support its application with records of planning, community engagement and cost management, as relevant, to demonstrate this funding need.

Demonstrating a long-term funding need is particularly important, because an approval can allow up to four annual higher caps in succession, each increasing the rate base permanently. We define a long-term funding need as a situation in which, as projected, a council's adjusted long-term revenue is less than the adjusted long-term expenditure it will need to perform its duties and functions efficiently, including some capacity to accommodate unforeseen events.⁵ A council can

⁵ In this context, the term 'adjusted' relates to a standard measure of financial performance. The adjusted underlying result, a financial indicator in the local government performance reporting framework, is defined as the surplus (or deficit) of *adjusted underlying revenue* less total expenditure, expressed as a percentage of *adjusted underlying revenue*, where this in turn is defined as total income other than non-recurrent capital grants for capital expenditure, non-monetary asset contributions and other contributions to capital expenditure.

best demonstrate it has a long-term funding need if it can provide records of effective long-term financial planning. Appendix 3 gives a more detailed description of such planning.

Conversely, a council that projects an adjusted underlying operating surplus has sufficient revenue to offset the cost of its current service provision. In this situation, residents paying rates and fees for service in any year are collectively 'paying their way.'

In summary, applications are expected to demonstrate that the council has done the following:

- It engaged effectively with ratepayers and communities about its services, infrastructure needs, rate levels, financial outcomes and trade-offs (see Appendix 3). It should also show how the outcomes of this engagement influenced its decision to apply for a higher cap.
- It developed and applied rigorous and consistent internal policies, plans and processes to ensure efficiency and value for money.
- It considered options to reduce or re-prioritise expenditure, and explored alternative funding, financing and revenue sources. If it rejected any options, it explains why those options were not adequate or appropriate.

We also have regard to a council's record of compliance with any previous rate cap.

2. How councils can apply for higher caps



2.1. Information sessions and informal meetings

Towards the end of each year, we generally conduct a series of information sessions or workshops, in person or online, for staff and councillors of local councils across Victoria. We remind councils of their obligations under the Fair Go Rates system, and inform councils of the higher cap application process and our activities relating to the local government sector. These sessions are a good opportunity to learn about the process and the legislative requirements, and to talk to us about a potential application. But we also welcome other opportunities to meet, beyond these information sessions, at any mutually convenient time and place.

We encourage any council considering applying for a higher cap to contact us as early as possible to discuss the process and our requirements.

2.2. Notification of intent

We ask councils to let us know **no later than 31 January** if they intend to apply for a higher cap, and estimate the date of their application. We can then organise the resources we need to assess all applications properly.

To let us know, the council can send an email advising us of its intention and nominating a contact officer. We will confirm receipt of the notification and publish a list of councils that give notice. We will provide notifying councils with an embargoed copy of any media release before its publication.

The notification does not oblige a council to send an application. If a council subsequently decides not to apply, it should tell us (by email) of the change at the earliest possible time. We will publish this updated information on our website.

The notification of intent should specify the:

- indicative higher cap or caps that the council is seeking
- number of years (maximum of four financial years)
- indicative reasons for seeking a higher cap
- the date the council expects to send the application
- details of the nominated contact for future communications.

2.3. Pre-application meeting

Once we receive a notification of intent, we will contact the council to arrange a time for a pre-application meeting. The meeting is a chance to discuss the application and to clarify as necessary the information that the council should provide.

2.4. Sending an application

An application for a higher cap must be in writing, with the council's approval and sign-off, and sent to us electronically. We will discuss with each council as necessary the best format and delivery method for the application and supporting documentation. File-size restrictions may mean a council must divide attachments across several emails. In this case, the council should number each attachment and clearly list them all on the application cover sheet. Councils should contact us if they have difficulties completing the templates, or sending their application or supporting material.

When sending an application, councils should ensure that their applications, and any attachments, do not contain personal or sensitive information (such as ratepayer details). A council should also clearly indicate any confidential information in its application (or the supporting information).

We will confirm receipt of each application and place it on our website (excluding any confidential information).

We will publish a list of the councils that applied for higher caps, with the increases sought and the number of years over which they would have effect. We will also provide applicant councils with an embargoed copy of any related media release.

Where to send notifications and applications:

Send electronic copies (required) to: localgovernment@esc.vic.gov.au

Send hard copies (at own discretion) to:

*The Local Government Team, Essential Services Commission,
Level 8, 570 Bourke Street, Melbourne, 3000.*

2.4.1. When should the council send its application?

A council can send us its application for a higher cap at any time between 1 February 2022 and 31 March 2022.⁶ This application period provides councils with flexible timing to accommodate their different circumstances.

If a council cannot apply before 31 March, the minister may set a new application date in the Government Gazette.⁷ A council should not assume the minister will do so other than in exceptional circumstances.

A council can apply for higher caps to take effect over one to four financial years. Once we approve an application, we expect the council to manage budgetary fluctuations for the duration of the approved higher cap or caps. However, in the context of multi-year approvals, the council can apply for an alternative higher cap by sending a new application. The council should consider doing so only if it can demonstrate a significant change in circumstances that was unforeseeable at the time of the initial multi-year application.

⁶ Section 185E(2), Local Government Act 1989.

⁷ Section 185E(2)(b), Local Government Act 1989.

3. Higher cap application requirements

A higher cap application must include:

1. an application cover sheet (the cover sheet)
2. a statement addressing the six legislative matters (the statement).

These two documents must be supported by:

3. the budget baseline information spreadsheet (the template)
4. records of engagement plans, tools and outcomes; key strategic planning and budgetary documents; records and reports of service reviews; relevant policies and procedures; any other necessary supporting documentation.

The following sections set out the basic data requirements and expected information in these elements of the application.

3.1. The cover sheet

Each application must include a completed application cover sheet. This form ([available on our website](#)) captures high-level information about the application. The cover sheet should include:

- the nominated contact for future communications
- the proposed higher cap or caps, in dollar and percentage terms
- the financial years (no more than four) in which a proposed higher cap or caps would have effect
- a brief summary of the reasons for the application
- a list of attachments that include the necessary evidence to support the application.

We expect these components to be consistent with the application statement, the budget baseline information and any other supporting documentation.

3.2. The statement

After the cover sheet, the second – and major – component of an application is a statement addressing the six legislative matters that the council must specify in seeking a higher cap (see Box 1.2).

The statement sets out the basis of the application for a higher cap. Together with any supporting evidence, the statement should demonstrate that the council has a long-term funding need that justifies a higher cap, and that approval is in the long-term interests of ratepayers and the

community. In section 4, we explain what we look for in the council's statement addressing each of the legislative matters. There, we explain how we assess whether what we find adequately demonstrates the fundamental features of good engagement, financial planning and management, and the need for a higher cap.

In addressing the six legislative matters satisfactorily, a council can show its community and ourselves that a higher cap meets the purposes of the Fair Go Rates system, because:

- there is a long-term need for additional funding
- council took appropriate steps to ensure its plans and processes were robust and efficient, reflecting outcomes from community engagement.

The governance principles, and the supporting community engagement, strategic planning, financial management and service performance principles, are all relevant when planning service delivery.⁸ They require a council to engage with ratepayers and the community, and so develop a general understanding of the services, resources and trade-offs needed for strong financial outcomes. The conversation is not just about what is wanted but about moving towards what is needed — and about ratepayers' willingness to pay for it.

If a council seeks a higher cap for more than one year, or well above the minister's rate cap, we look for greater substantiation than for a minor increase for a single year. The greater the potential burden on ratepayers that a higher cap represents, the greater is the effort we expect in preparing (and assessing) the application. A council is responsible for determining what it considers sufficient demonstration to support its application.

3.3. Budget baseline information

The third required component of any higher cap application is the completed budget baseline information template ([available on our website](#)). The data provided in this template gives us much of the information we need to assess the stated financial position of the council, its calculation of the proposed higher cap, and its reasons for applying.

The budget baseline information is important for assessing a council's application for a higher cap or caps. It should identify the services and assets most affected by the outcome of the higher cap application, and the overall impact on a council's financial performance. It should show how circumstances have changed, such that the council needs a higher cap. Above all, it should identify the outcomes that the council could achieve with the additional revenue. The budget baseline information should also document the council's assumptions — for example, the expected grants

⁸ Sections 9, 56, 89, 101 and 106 of the Local Government Act 2020

and growth in rateable properties — and show whether they help to justify a proposed rate increase. Box 3.1 below explains the importance of planning for the longer term.

The budget baseline information template focuses on the outlook for the period of the proposed higher cap (or caps), and the change relative to 2021–22, the base year. It requires a council to report on the forecast actuals in the base year and to present two scenarios for the years for which it seeks a higher cap. The first scenario assumes we approve the higher cap; the second assumes the council stays operating under the minister’s cap. This comparison shows the impact of the proposed rate increase on services, assets and financial position, relative to the base year.

A council should provide supporting information (income statements, balance sheets and capital works statements), for up to ten years, to complete the template. It should show both ‘with’ and ‘without’ higher cap scenarios. The information provided, for at least the budget year and the following three years, should be consistent with (or reconciled to) the adopted four-year Revenue and Rating Plan and four-year Council Plan, and the ten-year Financial Plan. For outer years covered only by the Financial Plan, we recognise that the council may have less detailed information to provide.

Box 3.1 Why is long-term financial information important?

A council may cite underlying factors that will impact on its finances over the longer term as reasons for a higher cap. Looking at only four years may not adequately capture these impacts. This is especially the case for a council applying for multi-year caps, where a four-year outlook is unlikely to capture the long-term effects of the proposal and demonstrate the underlying financial need. The same may be true where a council seeks a higher cap significantly above the minister’s cap, with potential impact on its finances over an extended period.

Based on the information provided, the budget baseline information template will automatically calculate relevant financial indicators, as used in the local government performance reporting framework.⁹ We use these indicators (in addition to other information provided in the council’s application) to assess a council’s financial capacity and long-term funding need. The council should also show the assumptions – such as forecasts of the consumer price index and of rate caps that the minister will set – which it built into its long-term financial plans.

The budget baseline information must include forecasts of annualised supplementary general rates and municipal charges. This means estimating the likely growth in rateable properties, for the term of the four-year Council Plan and the ten-year Financial Plan. These growth forecasts are

⁹ The template calculates indicators of Liquidity (Working capital; Unrestricted cash), Obligations (Asset renewal; Loans and borrowings; Indebtedness) and Operating position (Adjusted underlying result).

important for calculating the higher rates that would achieve the revenue that a council needs in the following years with a higher cap. The onus is on councils to make the most reasonable forecasts of this growth, and to explain their assumptions in the budget baseline information template.

The budget baseline information template includes detailed instructions and definitions to help council staff complete it. The information is important for demonstrating the reasons for a higher cap. It captures how the council's circumstances are changing and affecting its financial position. The more detailed the information provided, the easier it will be for the council to show why it needs the higher cap.

3.4. Supporting material

Any application for a higher cap needs to address the six legislative matters outlined in the Fair Go Rates system. The application can do this most effectively when supporting material is attached. For example, a discussion of a council's community engagement will be easier to understand and assess, if the application includes material such as:

- records of meetings and attendance
- the degree of involvement sought from participants
- samples of the information and material provided to participants or the public
- notes and analysis of participants' views.

We wish to minimise the need for a council to generate *new* accounting records, analyses and reports, purely to support an application. In fact, *existing* detailed material can help to show that the council identified a financial need through robust and reliable planning processes. However, when attaching such material, a council should include cross-references in its statement (with relevant page numbers) and explain its significance in sufficient detail to support the application.

We expect councils to include long-term plans – at least the ten-year Financial Plan that the 2020 Act prescribes – to support their applications. The outlook of the financial plans should capture the long-term effects of the proposal and demonstrate the underlying financial need. If necessary, we will ask the council for longer plans than the ones provided, or for more financial details to help us assess the underlying need. Without such information, we may not be satisfied that a higher cap is appropriate.

Supporting documents prepared for different purposes at different dates may present different versions of what is essentially the same information. If a council is going to rely on such documents to support its application, it needs to consider how best to present the information, and identify and explain any inconsistencies.

When attaching supporting material to its application, council should ensure all personal or confidential information has been removed, or else draw our attention to it to prevent sensitive information being uploaded on to our website.

3.5. Requests for further information

It takes considerable time to assess an application properly. We will use our best efforts to finish each assessment and publish the decision within two months of receiving an application. During this time, we shall be in touch with council contacts as necessary to clarify issues or ask for further information from the council, to understand its application better.

We will send a written request to the council as soon as possible: probably within two or three weeks of receiving the application. Other informal contacts for minor clarifications may continue as needed while we assess the application.

We will place the council's responses to our requests alongside the council's original application on our website. We will include any supporting documents provided, unless marked as confidential.

By ensuring that an application is cross-referenced to relevant supporting material that is included, a council will help us meet this target time frame.

4. How we assess applications

4.1. What is our assessment approach?

We have an integrated approach to assessing higher cap applications which considers how councils have addressed the six legislative matters and our statutory objectives.

Figure 4.1 graphically represents our integrated assessment.

4.1.1. Integrating the six legislative matters and our statutory objectives

As the Fair Go Rates system requires, we examine each of the six legislative matters that a council addresses in its application. Further, the 1989 Act requires us to have regard to a council's record of compliance with previous years' caps. Our assessment takes into account the statutory objectives and legislative matters that applications must address.

This approach ensures that the assessment includes all relevant factors covered by the legislation that impact on whether the application demonstrates a long-term financial need that should be funded through a higher cap.

Our assessment approach is set out below.

4.1.2. Our integrated approach to assessing applications

The way in which a council shows it has a long-term funding need, and the detail with which it does so, are both important. Applications must address each of the six legislative matters listed in Box 1.2 and discussed in detail in section 4.2. An application should demonstrate the amount of funds needed, the reasons for that need, and the actions that the council took to minimise the overall need. Our experience is that the more comprehensive and robust a council's long-term planning, and the better its engagement with the community, the simpler it will be for the council to demonstrate a long-term need for funds.

When assessing an application and determining whether a higher cap is appropriate, we depend largely on the information that the council provides in its application addressing the six legislative matters. However, data in the budget baseline information template also provides insights to guide our decision, as do key indicators in the local government performance-reporting framework. We examine the information provided in the whole application and seek to answer five basic questions.

1. What is the underlying financial position?

We look at the council's responses to the first two legislative matters: the *Proposed higher cap* and the *Reasons* for which it is required. They should be consistently stated and clearly explained throughout the application. We also look at the council's financial capacity, as shown by the current

values and the past and forecast trends of financial indicators in the local government performance reporting framework. We focus on the adjusted underlying result (as well as other key financial indicators such as the working capital ratio, unrestricted cash position and asset renewal ratio). We also consider specific council characteristics such as road length, and trends such as population and dependence on grant revenue, to understand the financial pressures faced by the council.

2. What has been done to manage the underlying position?

We look at the council's responses to the fourth and fifth legislative matters: *Efficiency and value for money*, and *Alternative funding and offsets*. We consider information the council provides in support, and we look at indicators and trends in the local government performance reporting framework. We may make comparisons with other councils, using unit costs of service delivery and similar benchmarks.

We consider records of service reviews that the council has completed, and of planned and historical savings that it can quantify. We consider processes for asset review and disposal. We look for any other cost saving initiatives the council has pursued or could pursue — within its own organisation and in cooperation with neighbouring councils.

We look at the council's management of cash including discretionary reserves, its use of debt in the context of the council's policy on borrowing, and the statutory financial management principles.

In its application, a council may reasonably focus on the specific objectives and intended outcomes of extra funding. However, we also look elsewhere, for evidence that a council maintains effective financial control in general. We expect to see meaningful discussion of service reviews, joint ventures, borrowings, procurement and the like.

3. How were ratepayer and community views taken into account?

We look at the council's response to the third legislative matter, *Engagement*, and the content and the way the activity was undertaken. First, we expect a council to show that it has a community engagement policy, itself developed through consultation with community members, which the council then follows in engaging with its community on issues relevant to the higher cap application.

We expect that the council followed this policy, and openly and actively discussed with ratepayers and the community all issues of substance covered in the other legislative matters. We consider measures of community satisfaction.

Beyond this, we also consider whether the council asks for views on how it can best conduct the engagement program. We assess whether the council monitors its success in reaching people and adjusts its program accordingly. We look for records showing the council considers participants' views and reflects them in its application. We consider how the council provides feedback to the community and addresses any unmet expectation.

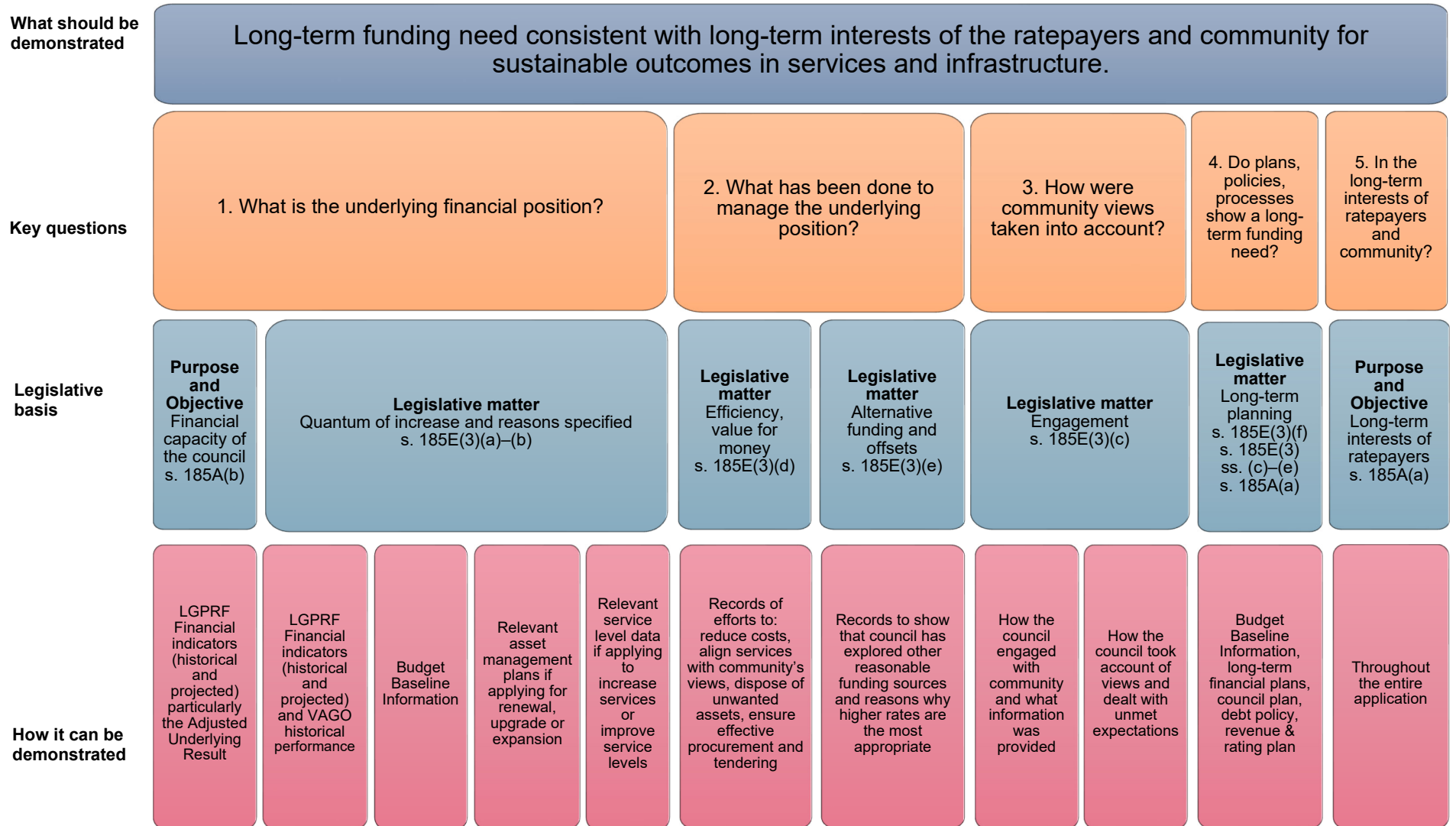
4. Are the plans, policies and processes in place sufficient to demonstrate a long-term funding need?

Our focus is on the sixth legislative matter, *Long-term planning*, and its integration with the other matters and its consistency with the supporting financial information. A council can demonstrate its long-term funding need most clearly through good long-term financial planning. We consider the features outlined in Appendix 3 are fundamental to good financial planning and management, and we will look for them in a council's higher cap application. These features help councils ensure they base their projected long-term revenue and expenditure trends on robust and timely information. In this way, they can also identify long-term funding need with sufficient confidence for good decision-making.

5. Does the application demonstrate that it is in the long-term interests of ratepayers and the community?

To justify a permanent increase in the rate base and meet the statutory objectives, we should be satisfied that the application adequately demonstrates a long-term funding need. We must also be satisfied that a higher cap is consistent with the long-term interests of the council's ratepayers and community for sustainable outcomes in services delivery and critical infrastructure.

Figure 4.1 How our application assessment approach sits within the legislative framework



4.1.3. Other considerations

Need for greater demonstration for a multi-year cap

In its form and presentation, an application for a higher cap that will take effect over two to four years is not significantly different from an application for a single year. But in one key respect, there is a significant difference. An approved multi-year cap can increase the council's revenue — and the community's rate burden — to a far greater degree.

Because of this, we expect and require the application for a multi-year cap to show a higher standard of consistency and attention to detail. In documenting its plans, we would expect the council to demonstrate that it:

- considered whether trade-offs — such as different service, infrastructure and financial options that might not exist in the short term — may become available over two to four years
- modelled alternative scenarios (not limited to a single with/without higher cap comparison)
- outlined the key operating and financial assumptions in the long-term financial plans, ensuring these are consistently stated (or adequately reconciled) in the narrative statement, formal budgets and plans, and the budget baseline information template.

Engagement is particularly important for multi-year applications — and it should be clear how the views of ratepayers and the community informed the council's plans. We expect an application to show that the council engaged effectively, securing adequate representation and involvement of its community. Its engagement program should make clear the options under consideration and the impact of any multi-year cap. The application should also show how the council responded to the views that it gathered through engagement, and dealt with unmet expectations.

Because circumstances may change significantly during the timespan of a multi-year cap, we expect a council to commit to continuing this engagement and reviewing its priorities, as part of its normal planning and budget processes, as stated in sections 4.2.3 and 4.2.5.

The affordability of a higher cap

Affordability is an important consideration for a council when setting its rates. We encourage councils to take this into account when they make their decisions about whether to apply for a higher cap.

We do not assess affordability in councils' higher cap applications; the legislation does not require us to do so.¹⁰ Councils are best placed to determine their communities' capacity to pay after taking into account all major factors that may affect their communities. The decision on the appropriate trade-off between service impacts and the level of rates rightly sits within the council's jurisdiction.

Our role is limited to ensuring that the higher cap application process undertaken by councils is robust and transparent.

Long-term and short-term need

A council with well-developed long-term financial plans should not have to resort to a higher cap simply to balance any net cash needs in its budget from year to year. It should be able to meet any short-term cash needs from available resources, including its existing unrestricted cash holdings. Seeking ongoing higher rates to fund year-to-year fluctuations in cash flow would be inconsistent with the long-term interests of ratepayers and communities.¹¹

Generally, we consider a higher cap is not appropriate if an application:

- does not demonstrate a long-term funding need
- proposes to apply the higher cap to fund short-term needs
- is not supported by adequate long-term financial planning
- does not demonstrate that the council accounted for the views of the community and ratepayers
- is inconsistent with the council's internal plans and policies, and conflicts with information provided to the community and ourselves
- is not supported by our analysis of the council's financial capacity and overall flexibility to manage its short-term needs.

4.2. The six matters that must be addressed

When assessing how a council's application has addressed each of the six legislative matters, we consider:

- the purpose of our review of the matter
- guiding principles for each matter
- how the application has met our general and specific expectations of each matter
- the supporting evidence.

¹⁰ Affordability is not one of the matters listed in the legislation that councils must address in their applications — section 185E(3) of the 1989 Act.

¹¹ Section 101(1)(c), Local Government Act 2020.

While we adopt an integrated approach to our assessments (as outlined in section 4.1), all applications — whether for one year or for several — must cover the core subject matter. That is, they should consider all six legislative matters as the means by which they demonstrate a long-term funding need, established through robust financial planning and engagement with the community.

Sections 4.2.1 to 4.2.6 give further guidance on the information we consider will assist a council address the six legislative matters, namely:

1. Proposed higher cap
2. Reasons
3. Engagement
4. Efficiency and value for money
5. Alternative funding and offsets
6. Long-term planning

4.2.1. Proposed higher cap

An application must specify a proposed higher cap for each specified financial year.¹²

Purpose

The purpose of this legislative matter is to show the rate increase(s) being sought and the year(s) in which the increase(s) will have effect.

Guiding principles

We will verify that the proposed higher cap is:

- correctly expressed as the total percentage increase above the base average rate, inclusive of the minister's cap
- consistently stated in the budget baseline information template and elsewhere in the application.

General and specific expectations

A council can address this matter by accurately completing the application cover sheet (Microsoft Word form) and the budget baseline information template (Microsoft Excel spreadsheet, containing detailed instructions on how to enter the data).¹³ These documents cover:

- the higher cap or caps being sought

¹² Section 185E(3)(a), Local Government Act 1989.

¹³ Both templates are available on our website at <https://www.esc.vic.gov.au/local-government/higher-rate-cap-applications/guidance-councils-applying-higher-cap#tabs-container2>.

- the year or years over which the higher cap or caps will have effect (maximum of four years).

Appendix 2 outlines how the rate cap works and how to calculate the base average rate and capped average rate.

A council can apply to us for a higher cap for a period of up to four financial years.¹⁴

It can specify different higher caps each year for a multi-year application (for example 4 per cent to take effect in the first year, then 5 per cent, and then 3 per cent). However, to provide greater certainty to ratepayers and smooth the rate path, we encourage councils to adopt a uniform annual rate of increase. This would be the rate equivalent to the average annual increase over the period specified. If a council chooses not to smooth the rate path, it will need to explain why a varying annual rate of increase is more appropriate.

The proposed higher cap should be expressed as the total percentage increase from the base average rate. Any approved cap is inclusive of any average rate cap that the minister sets. For multi-year applications, we recognise that the average rate cap set by the minister will not be known for the years beyond the immediate budget year. Councils may want to use the Department of Treasury and Finance forecasts of the consumer price index for planning and budgeting.¹⁵ However, the full increase the council seeks should reflect its long-term funding need, and should be the outcome of rigorous long-term planning.

A council should ensure the application cover sheet, the statement and the budget baseline information template are consistent in stating both the amount of revenue applied for, and the corresponding percentage increase in average rates.

Supporting evidence

As outlined above, a council must complete the application cover sheet and budget baseline information template. From information the council enters, the budget baseline information template calculates 'with higher cap' and 'without higher cap' forecasts of selected financial indicators. These are the same indicators used in the local government performance-reporting framework.

As section 3.3 explains, we expect the budget baseline information template to show results with and without a higher cap for the four years of the Budget and up to ten years of the long-term Financial Plan.

¹⁴ Technically this would be a higher cap in each of (up to) four successive years. Each higher cap creates an ongoing permanent increase in the rate base.

¹⁵ See <http://www.dtf.vic.gov.au/Publications/Victoria-Economy-publications/Macroeconomic-indicators>.

4.2.2. Reasons

*The reasons for which the council seeks the higher cap.*¹⁶

Purpose

The purpose here is to specify the immediate and underlying reasons for the application — reasons that the application and supporting documentation should consistently reflect throughout. This should explain whether the council is seeking a higher cap to address a material change in financial circumstances; a change to the nature or level of services provided; specific infrastructure needs; to ensure long-term financial sustainability; or some other factor or combination of factors.

Applications can specify more than one reason in one year – or in different years of a multi-year application. If different reasons are specified, then applications should demonstrate and quantify the funding requirements for each reason.

Guiding principles

We will consider whether the reasons for seeking the increased revenue are consistent with the long-term funding need of the council.

General and specific expectations

We expect councils to quantify the amount(s) that make up their funding need, and identify the reason(s) for which the funding is required. Councils are generally expected to demonstrate a long-term funding need.

As part of its normal planning and budgeting process – without considering a possible higher cap – every council is expected to model the services and service levels that it can provide in different revenue scenarios. We therefore expect that any council, if seeking a higher cap for 2022–23, has already prioritised the services and expenditures under the rate cap in the base year 2021–22. But, if a council now seeks a *higher cap* to fund a service or expenditure that it funded from *capped revenue* in the base year, it needs to explain why it can no longer do so. The council should also engage with its community on the need for this funding change. Further, it should include evidence of this community engagement in the application. Section 4.2.3 discusses this in detail.

Most reasons put forward by a council will likely fit into one or more of the following categories.

- The council faces sustained underlying operating deficits, possibly following a material change in revenue or costs. The deficits cannot be managed by trade-offs or alternative funding, such as internal savings, the use of other revenues, or by an operational change to minimise the impact in the short term. The application must make this point clear in the response to the fifth

¹⁶ Section 185E(3)(b), Local Government Act 1989.

legislative matter. We expect a council to manage one-off or immaterial short-term variations in its liquidity through day-to-day financial management.¹⁷ However, when a council faces major increases in its long-term funding requirements, it should clearly identify and quantify the causes.

- The council, in consultation with its community, decided to provide a new or improved service, but does not have the extra funding needed.
- The council is increasing its efforts to address asset renewal requirements, consistent with its long-term strategy and asset-management plans.
- The council wants to fund significant investments in new infrastructure, which it prioritised in its Council Plan and Financial Plan, and potentially in its long-term Asset Plan, developed through engagement with the community. The funding requirements (and corresponding revenue needs) should reflect the whole-of-life cost of the project. A council should not seek higher caps to fund specific small, short-term capital projects that form part of its regular capital-works plans.

A higher cap represents a permanent increase in a council's rate base that will continue to compound every year. For this reason, we do not expect to receive applications that aim to fund short-term expenditure or cash-flow requirements. It is generally not in the interests of ratepayers and the community to approve higher caps on this basis.

There are no reasons that automatically ensure the approval of a higher cap.

Supporting evidence

We expect an application to provide documentation that supports the council's stated reasons. The documentation should show if circumstances have changed, or if the council has an existing funding need, such as a renewal backlog or a long-term adjusted underlying deficit. This evidence may come from the financial statements of past years, the long-term Financial Plan or Asset Plan, or from a more detailed, short-term Council Plan or Revenue and Rating Plan. If the increase is needed for one specific action, such as repairing council-owned infrastructure, then the council needs to explain how in future years it will use the cumulative higher revenue that will have been incorporated into the rate base.

We expect a council to clearly explain any material differences between past budget and actual expenditure (particularly underspending) on services or infrastructure. This explanation will give us confidence that the budgeted funds will be spent appropriately in the interests of ratepayers.

The budget baseline information template (see section 3.3) is an essential part of the evidence that demonstrates the council's reasons.

¹⁷ 'Liquidity' here meaning the council's ability to generate sufficient cash to pay its bills on time.

4.2.3. Engagement

*How the views of the ratepayers and the community have been taken into account in proposing the higher cap.*¹⁸

Purpose

The purpose of this legislative matter is to ensure a council demonstrates it considered the views of ratepayers and the community in planning for a higher cap.

A higher rate cap, even if in place for only one year, potentially has a long-term impact on the finances of the council and its community. For this reason, the higher cap itself, and the reasons for which the council seeks it, should clearly be central to council's long-term financial planning and its community involvement. The more the council integrates engagement on a higher cap into its formal planning process, the easier it will be to address this legislative matter.

In the context of new requirements of the 2020 Act, councils must consult their communities to develop an engagement policy. They must follow that policy, through engagement with community members, to develop an aspirational Community Vision and strategic long-term plans to give effect to the vision. These plans include the ten-year Financial Plan (and Asset Plan, in due course) and the four-year Council Plan. Councils should also engage with their communities on the Revenue and Rating Plan.

The council may demonstrate it followed relevant obligations of the new Act, as summarised above, and show that its engagement and planning processes meet general requirements. The council need not undertake a separate engagement program specifically for the higher cap. However, if the council seeks to rely on engagement that it undertook for planning or other purposes, it must demonstrate how it incorporated and dealt with the issues most relevant to the higher cap, such as:

- the specific reason(s) for the application, and the council's intended treatment of any alternative(s) that may have been proposed but will not now be pursued
- how the council conducted its engagement process and responded to uninvited or unwelcome feedback
- how the council dealt with trade-offs, such as service levels, costs and opportunities for savings, that it would – or would not – consider
- how the council responded to alternative funding or financing options for this or other projects
- how the council engaged in its strategic planning.

¹⁸ Section 185E(3)(c), Local Government Act 1989.

Guiding principles

Our consideration of this matter will be guided by our key engagement principles (Box 4.1) which are broadly consistent with the more general requirements in the 2020 Act.¹⁹

Box 4.1 Key engagement principles

Principle 1: The engagement program should contain clear, accessible and comprehensive information and follow a timely process to engender feedback from the community.

Principle 2: The engagement program should be ongoing and tailored to community needs.

Principle 3: The engagement program should prioritise matters of significance and impact.

Principle 4: The engagement program should lead to communities becoming more informed about council decision making.

Source: Essential Services Commission 2015, *A Blueprint for Change*, pp. 69-70

General expectations

As a minimum, a council's engagement on higher caps should meet our key engagement principles.

Councils will differ in how they engage with ratepayers and communities. We do not prescribe how councils should do this; such decisions sit with councils. But applications should clearly explain how the council engaged with its community and why it chose this approach, what information it provided to the community and how this was provided. Applications should also explain what the council learnt about the views of its ratepayers and the community, and how the council took these views into account in deciding to seek a higher cap.

We recognise that effective community engagement can be challenging. Whether or not a certain method is appropriate will depend on the demographic, geographic and financial characteristics of each council.

We expect that councils will increasingly integrate engagement on a higher cap application into their existing planning and budgetary processes.

A council should show that it has engaged openly and effectively, and in ways that draw out community views. Community members and ratepayers should be given enough information to determine if a proposed higher cap represents good value for money, that trade-offs have been considered, and that a higher cap fits into the council's long-term strategy. Over time, the

¹⁹ Section 56, Local Government Act 2020

community should become better informed of the trade-offs required for a council to achieve long-term financial stability.

An application should show the efforts that the council made to engage effectively with its ratepayers and community members to obtain a representative view. The council should actively ask for the views of a sufficient number of people, reflecting diverse groups in the municipality.

Specific expectations

We expect the council to provide a narrative describing and demonstrating:

- what it did to engage with ratepayers and community members (outlining who was approached and in what way, when and where) and why the selected methods were chosen
- what information the council gave ratepayers and community members about issues such as:
 - the scale of the higher cap
 - whether the higher cap addresses a short-term or long-term need
 - details of the options, trade-offs and different rate-increase scenarios
- what the outcomes of the engagement program were (documentation and analysis of the responses of ratepayers and community members)
- how the council took account of the views of ratepayers and the community in seeking a higher cap. Although not bound to accept those views even if expressed by a majority, the council should explain how it weighed up and considered those views and how they influenced its decision, by describing:
 - what it learnt through the engagement process
 - how it is responding to the issues raised during the engagement and why it is responding that way
 - what the council is doing about unmet expectations arising from the engagement undertaken.

We note in particular that, based on the documentation provided by some councils in previous applications, it has not always been sufficiently clear:

- whether councils engaged with ratepayers and the community and presented adequate information to them, on trade-offs and the potential effects on rates, services and service levels
- how the council considered ratepayer and community views, and how it gave feedback on those views, particularly when it received mixed (or largely negative) responses to its engagement.

Supporting evidence

To support its narrative describing community engagement, the council must provide evidence. This should demonstrate the thinking at each stage of the engagement program — from planning through to evaluation. This evidence might include:

- the community engagement policy, as the 2020 Act requires, and any engagement plans relevant to the higher cap application under review
- agendas, material and information provided to community members during the engagement processes
- documents that capture and analyse the views expressed during the engagement processes (such as survey results, comments from community meetings or listening posts, or submissions)
- council analyses of community and ratepayer views
- council meeting reports, minutes or records of discussions where the council considered the outputs of the engagement process (i.e. the views of ratepayers and the community)
- material provided to community members reporting back and explaining how the engagement process informed the council's higher cap application.

Community engagement resources are available on our website and elsewhere

We have developed resources to assist councils planning, undertaking and reporting on their engagement. These resources are available on our website.²⁰

You may find other helpful resources through [IAP2](#), [Engage Victoria](#), [Rural Councils Victoria](#) and other organisations.

4.2.4. Efficiency and value for money

*How the higher cap is an efficient use of council resources and represents value for money.*²¹

Purpose

The purpose of this legislative matter is to ensure an applicant council can demonstrate it has adequate policies and processes in place and has taken specified actions. The aim is to ensure any additional revenue raised will be used efficiently, and any outcomes being pursued represent value for money for ratepayers. In many ways, this matter represents a public demonstration of the council's adoption of the service performance principles that it is obliged to follow in delivering services to its community.²²

²⁰ See <https://www.esc.vic.gov.au/local-government/higher-rate-cap-applications/guidance-councils-applying-higher-cap/community-engagement-resources-councils>.

²¹ Section 185E(3)(d), Local Government Act 1989.

Guiding principles

Our consideration of this matter takes into account the service performance principles (a)–(e) required by section 106 of the 2020 Act (Box 4.2).²³

Box 4.2 Service performance principles

- (1) A Council must plan and deliver services to the municipal community in accordance with the service performance principles.
- (2) The following are the service performance principles—
 - (a) services should be provided in an equitable manner and be responsive to the diverse needs of the municipal community;
 - (b) services should be accessible to the members of the municipal community for whom the services are intended;
 - (c) quality and costs standards for services set by the Council should provide good value to the municipal community;
 - (d) a Council should seek to continuously improve service delivery to the municipal community in response to performance monitoring;
 - (e) service delivery must include a fair and effective process for considering and responding to complaints about service provision.

Source: Section 106(1)–(2), Local Government Act 2020.

We also have regard to relevant overarching governance principles in s. 9(2) of the 2020 Act, and the council's demonstrated concern for the best outcomes for the community, for innovation and continuous improvement, and for ongoing financial viability.

We consider the service performance principles cover expenditure that councils may not traditionally classify as a service, including capital works. Importantly, the principles also cover expenditure that is not directly related to the *Reasons* for the application. This is because a failure to follow these principles in other areas of daily operation will ultimately affect a council's capacity to deliver services. It will also affect ratepayers' value for money from the rates they pay.

²³ The first four service performance principles (a)–(d) above effectively replace four earlier Best Value Principles (section 208B(a)–(d) of the 1989 Act). The fifth principle (e) may reinforce the other four.

General and specific expectations

The application should show how achieving the outcome stated in the *Reasons*, at the cost of the stated *Proposed higher cap*, represents good value for ratepayers.

We expect applications to demonstrate that the council has sound processes and policies to ensure it uses resources efficiently in general, and that it followed them in determining the need for a higher cap.

When proposing to fund the delivery of new or expanded services, or new infrastructure, a council should show it took appropriate steps to ensure the planned expenditure would represent value for money for ratepayers. This might include service reviews, business cases and cost/benefit analyses as appropriate, and consideration of whole-of-life project costs. A council should demonstrate the required objectives and outcomes of proposed changes to services or infrastructure, and the options considered for delivering those objectives and outcomes.

The council should quantify any efficiency savings gained and explain how forecast expenditure reflects those savings.

Supporting evidence

To support its application, the council may refer to or describe relevant sections of internal policies and processes for ensuring efficiency and value for money. This evidence might include tendering or procurement policies; policies for reprioritising capital expenditure; service reviews and their outcomes; internal efficiency initiatives; business cases; cost/benefit analyses; and assessment of alternative delivery options. The council should also explain how it has followed these policies/processes.

Further, if applicable, the council should provide the results of any benchmarking studies that compared the council's unit costs with those of its peers. For example, information on the Know Your Council website can support an application effectively. This can be particularly helpful if the website shows performance measures related to the *Reasons* that the council identified in its application.

4.2.5. Alternative funding and offsets

*What consideration has been given to reprioritising proposed expenditures and pursuing alternative funding options and why those funding options are not adequate.*²⁴

Purpose

The purpose of this legislative matter is to ensure a council considered the prioritisation of services and different funding and financing options before seeking a higher cap. The council should demonstrate that it considered other reasonable options, and explain why it judged those options inadequate. The application should show that the council's engagement program sought community views on the issues.

Guiding principles

Our assessment of this matter is consistent with relevant overarching governance principles in s. 9(2) of the 2020 Act and is based on evidence of whether:

- the council considered alternative budget scenarios, and included them in engaging with its ratepayers and community
- the council's decision to apply for a higher cap is the most appropriate funding option to meet the stated *Reasons*.

General and specific expectations

We expect a council to show how it came to prefer raising additional revenue through a higher cap, rather than other options, and how it considered any trade-offs (see Box 4.3). The council should show it has considered its funding need in the context of:

- all its current operations and planned investments, and possible efficiencies
- the range and standard of services it delivers, and their alignment with community priorities
- alternative funding or financing options for different activities and investments
- short-term cash-flow options, having regard to long-term revenue and cost trends.

The council should confirm that, having considered these other options, it was still of the view that a rate increase was the best way to deal with budget pressures.

It is important to remember that debt finance can be a key element of prudent and responsible long-term financial planning. Borrowing money to fund the construction of 'long-lived' assets can help spread the costs of these assets over time. Long-lived assets, by their nature, will service both current and future ratepayers. Smoothing the costs over time also helps ensure those who benefit are also those who pay.

²⁴ Section 185E(3)(e), Local Government Act 1989.

We expect a council applying for a higher cap to show it has a well-considered debt policy (preferably consulted on with the community) that guides its decision whether to use debt to reduce the need for additional funding in the short-term through increased rate revenues. If the council adopts a debt position that is not consistent with its debt policy, then the application should clearly explain why. In other words, as required by the legislation, a council's application should demonstrate it considered the option of debt and the reasons for adopting or not adopting it.

The application needs to demonstrate that the council considered other suitable funding or financing options. Possible options might include borrowing funds, seeking grants or charging user fees (for the reason stated in the application, or for other purposes). The council might also consider rescheduling planned works, changing the nature or level of current services, or working through collaboration with other councils. It also needs to outline the decisions reached on the options (and the reasons for those decisions). In demonstrating the preferred option, the council should show how a higher cap is in the long-term interests of the community and ratepayers. The council, in consultation with the community, must decide priorities and desired outcomes; this decision is not our role.

Box 4.3 Trade-offs

There will inevitably be 'trade-offs' between different options that a council can take into account to determine the most appropriate approach to meet its long-term funding need and the long-term interests of the community.

'Trade-offs' is a term that appears a number of times in this document, particularly in the context of choices presented in community engagement (Section 4.2.3), and when council is examining expenditure proposals or funding options (this Section 4.2.5). When an application describes the trade-offs that were considered, we expect a clear statement that compares the financial impacts, service impacts or infrastructure impacts that arise from the choice of pursuing different options.

A council's strategic approach to considering alternative options and their potential impacts on ratepayers and the community is a key element of sound long-term financial planning.

Supporting evidence

Where relevant, an application should show how the council considered reprioritising services and changing service levels. It should show that the council considered using alternative revenue sources such as its current financial reserves or debt financing for the proposed expenditure. The application should describe the engagement undertaken to identify the community's service preferences, with council's consideration of these preferences. Where relevant, an application

should provide asset-management plans that support the timing of proposed works and the whole-of-life project costs for capital projects.

The council should provide its four-year Revenue and Rating Plan and four-year Council Plan, prepared as required by the 2020 Act. The application should include the council's financial management policies relating to borrowings and debt, and its ten-year Financial Plan and any relevant asset plan.

The budget baseline information will also help provide evidence. In particular, it will show how service reviews and/or reprioritisation might have affected, or be likely to affect, the revenue and expenditure profiles of services.

4.2.6. Long-term planning

*That the assumptions and proposals in the application are consistent with those in the council's long-term strategy and financial management policies set out in the council's planning documents and annual budget.*²⁵

Purpose

The purpose of this legislative matter is to show the reasons for the application are consistent with the council's long-term strategy and financial management plans, policies and other key planning documents. Our assessment will consider the council's recent, current and projected financial position, its relevant policies and the way that the higher cap links to longer-term plans. This information will frame and support the council's reasons for seeking a higher cap and help us understand the council's financial position.

Guiding principles

Our consideration of this matter is consistent with relevant overarching governance principles in s. 9(2) of the 2020 Act and focuses on whether the council has demonstrated that:

- its reasons for seeking a higher cap are consistent with, and supported by, its key financial management documents and other strategic and planning documents
- in seeking a higher cap, the council adhered to the financial management principles required by section 101 of the 2020 Act (box 4.4).

²⁵ Section 185E(3)(f), Local Government Act 1989.

Box 4.4 Financial management principles

- (1) The following are the financial management principles—
- (a) revenue, expenses, assets, liabilities, investments and financial transactions must be managed in accordance with a Council's financial policies and strategic plans;
 - (b) financial risks must be monitored and managed prudently having regard to economic circumstances;
 - (c) financial policies and strategic plans, including the Revenue and Rating Plan, must seek to provide stability and predictability in the financial impact on the municipal community;
 - (d) accounts and records that explain the financial operations and financial position of the Council must be kept.
- (2) For the purposes of the financial management principles, financial risk includes any risk relating to the following—
- (a) the financial viability of the Council;
 - (b) the management of current and future liabilities of the Council;
 - (c) the beneficial enterprises of the Council.

Source: Sections 9 & 101, Local Government Act 2020.

General and specific expectations

We expect a council to demonstrate that the reasons for its application (and underlying need) are consistently represented in, and supported by, its relevant financial and planning policies and documentation. Accounting records and projections should be reconciled to operational programs and asset-management records.

The budget baseline information template described in section 3.3 shows an appropriate level of detail. Box 3.1 explains that we would normally expect the long-term plans to cover a period beyond the four years of the Council Plan and the Revenue and Rating Plan. The council should use its proposed higher cap and the minister's cap to show and compare results with and without a higher cap for the budget year. It could use the Department of Treasury and Finance forecast of the consumer price index as a proxy for the minister's cap in future years.²⁶ This would allow similar comparisons for the years of its short-term detailed plans. The council should explain the basis of any critical assumptions it makes for the later years of its long-term Financial Plan and Asset Plan.

²⁶ See <http://www.dtf.vic.gov.au/Publications/Victoria-Economy-publications/Macroeconomic-indicators>.

We would also expect councils to ensure their financial plans are clear and consistent with other supporting material such as financial strategies and policies, and operational asset-management plans. For instance, for a higher cap intended to close an asset-renewal gap, we would expect to see the reason, the monetary amounts and the timescale reflected in asset condition reports and financial plans attached to the application.

We also expect an application to consider the council's major financial challenges systematically and reflect them in the financial plans. The plans should deal with major trade-offs, and model alternative scenarios that align with good policies and financial sustainability.

The council will have used certain assumptions to quantify the higher cap that it seeks. For example, these assumptions might relate to future costs, demand trends, changing community needs and appropriateness of funding source. All relevant planning documents should state these assumptions consistently. When this is not the case, the application should highlight and explain differences. We also expect a council to demonstrate that it reviews the assumptions underpinning its long-term financial plans annually, and explain the reasons for changes to key assumptions in these plans.

We expect that the council adheres to the financial management principles of the 2020 Act, and that the application and supporting documentation reflect this.

Supporting evidence

As evidence, a council may provide its Community Vision, Council Plan, Financial Plan, Asset Plan, and Revenue and Rating Plan, and its annual budget. It should include or reference any material that supports critical assumptions about external economic trends. The budget baseline information should also provide supporting evidence. We expect a council's application to direct us to the relevant sections or pages of the plans and policies.

4.3. Expert advice

If appropriate, we may engage external expertise to assist our analysis and understanding of key aspects of higher cap applications. This expertise may relate to financial and accounting analysis, infrastructure maintenance and planning, corporate planning, and community engagement. Our use of this expertise does not represent an additional requirement or criterion, but simply helps us better understand a council's application and the implications of our decisions. We will publish any external advice that is directly relevant to our assessment of an application, together with our decision report in response to that council's application.

4.4. How will councils receive our response?

We can approve, approve in part, or not approve, the higher cap proposed by the council. We may also approve an alternative higher cap, if this is not higher than the higher cap proposed by the council. In deciding on an application for a higher cap, we must have regard to:

- the purposes of the Fair Go Rates system
- whether the application satisfies the legislative matters
- whether the council has complied with directions, advice and guidance in relation to a particular application under section 185E(5) of the 1989 Act
- the council's record of compliance with the rate cap.

We will publish a decision report that details the higher cap approved (or not approved), the year(s) for which it will have effect, and the reasons for our decision. We will also make all decisions publicly available on our website after notifying the relevant council of the decision. Further, any approved higher cap will appear in the Victorian Government Gazette.

We will provide a council with an embargoed copy of the decision report before its public release. We will also invite the council for a formal meeting to discuss the reasons for our decision.

Approved

Approval means a council can increase its capped average rate by no more than the percentage amount of the higher cap proposed in its application for the specified period.

Approved in part or approval of an alternative higher cap

Under section 185E(6) of the 1989 Act, we have authority to set a lower rate cap than the one that the council proposed.

Approval in part may occur where we approve a higher cap proposed by the council, but do not approve all years for a multi-year application, or all reasons for a multi-reason application.

Approval of an alternative higher cap means a council can increase its capped average rate by more than the average rate cap set by the minister, but only by the percentage that we set. This will be lower than the percentage increase that the council applied for.

Not approved

A 'not approved' response means a council cannot increase its capped average rate by more than the average rate cap set by the minister.

4.5. How can a council contest a decision?

A council can apply for a judicial review by the Supreme Court, on administrative law grounds, of a commission decision on an application for a higher cap. This means the court could set aside our decision if it finds that we did not give a council a fair hearing on its application or that we made an error of law. If the court finds a procedural or legal error, then we can be required to make a fresh decision on the application in a manner consistent with the court's guidance. The court could not substitute its own decision based on the facts before it.

5. Third-party submissions

5.1. How do we respond to ratepayer and stakeholder submissions?

Throughout the process, we might receive submissions from the public or other stakeholders, particularly as ratepayers become aware that their council is considering a higher cap application. The Fair Go Rates system does not prescribe a process for us to respond to these submissions.

Community members should contact their council directly with any concerns about a proposed higher cap. The council should then discuss those concerns in its application to us.

Concerned individuals or groups may wish to make a submission to us at any stage by email to localgovernment@esc.vic.gov.au. How we treat such a submission will depend on where we are in the application process.

Submissions received before a council sends an application

Any person or organisation making a submission on a possible higher cap will be referred to the relevant council. If that council later applies for a higher cap, we will assess how the council sought and responded to the views of ratepayers and the community, in proposing the higher cap.

Submissions received after a council has sent an application

When we have an application from a council, we will consider a submission only if it is relevant to the purposes of the Fair Go Rates system and the six matters set out in section 185E(3) of the 1989 Act (as shown in Box 1.2). If we receive submissions that are relevant, then we will consider those submissions, to the extent possible, depending on the stage that an application has reached. With the submitter's consent, we may forward the submission (or parts of it) to the relevant council for its response which we will consider as part of our assessment, but we cannot facilitate a dialogue between the submitter and the council. We may publish submissions with agreement from the submitter and if relevant to our decision.

Appendix 1: Background and role of the commission

The Fair Go Rates system

The Victorian Government established the Fair Go Rates system in December 2015. This legislative framework limits the annual increases in Victorian local government rates.

Our role in administering the Fair Go Rates system

In this system, Victorian councils cannot increase average rates by more than the **average rate cap** set for them by the Minister for Local Government, unless we approve their application for a **higher cap**.²⁷ In the past five years, the minister has set a single rate cap for all councils, but can set different rate caps for councils individually or by class. For simplicity, we refer to this as the minister's cap.

We also have a role in **monitoring and reporting**.²⁸ We report annually on councils' compliance with the rate cap (unless the context requires otherwise, this refers to their compliance with the minister's cap or a higher cap we approved). We also report on outcomes associated with the Fair Go Rates system every two years. Our first report on the outcomes of rate capping for the two years 2016–17 to 2017–18 was released in May 2019, and our report for four years 2016–17 to 2020–21, in May 2021.²⁹

In performing our statutory responsibilities under the Local Government Act 1989 (the 1989 Act), we have the following objectives:

- to promote the long-term interests of ratepayers and the community in relation to sustainable outcomes in the delivery of services and critical infrastructure
- to ensure that a council has the financial capacity to perform its duties and functions and exercise its powers.³⁰

Victoria's 79 councils reflect the diverse geographic and socioeconomic circumstances of the people they represent. The reasons why councils seek higher caps are accordingly diverse. We are keen to help councils understand the system and its requirements which is why we publish this

²⁷ 'Average rates' refers to the rates paid by the notional average ratepayer. This is calculated by dividing total revenue required from rates by total number of rateable properties in each local government area.

²⁸ Section 10E, Essential Services Commission Act 2001.

²⁹ See <https://www.esc.vic.gov.au/local-government/rate-capping-outcomes-reports>.

³⁰ Section 185A, Local Government Act 1989.

guidance for councils on an annual basis. To support this guidance, our website also contains reference information about community engagement.³¹

Our role in assessing higher rate caps

Our role is to assess any application for a higher cap and to decide whether the proposed higher cap is appropriate.³² We base our assessment of an application on all of the following:

- our statutory objectives to promote the purposes set out in section 185A of the Local Government Act 1989 (the 1989 Act) (see Box 1.1)
- the six matters specified in section 185E(3) of the 1989 Act (see Box 1.2)
- the council's compliance history
- the council's compliance with any commission directions on the manner and form of an application.

When the assessment is finished, we publish our decision and reasons on our website and, if we approve a higher cap, we do so through a special Order published in the Government Gazette. The Order sets out the permissible percentage increase in average rates for the years specified.

³¹ At <https://www.esc.vic.gov.au/local-government/resources-councils/community-engagement-resources>.

³² Section 185E(6), Local Government Act 1989.

Appendix 2: How the rate cap works

The rate cap limits the maximum amount a council can increase its average rates in a rating year.

‘Average rates’ refers to the rates paid by the average ratepayer and is calculated as total revenue from general rates and municipal charges divided by the total number of rateable properties.

The cap does not apply to other charges and levies such as service rates and charges, special rates and charges, revenue in lieu of rates and the fire services levy.³³

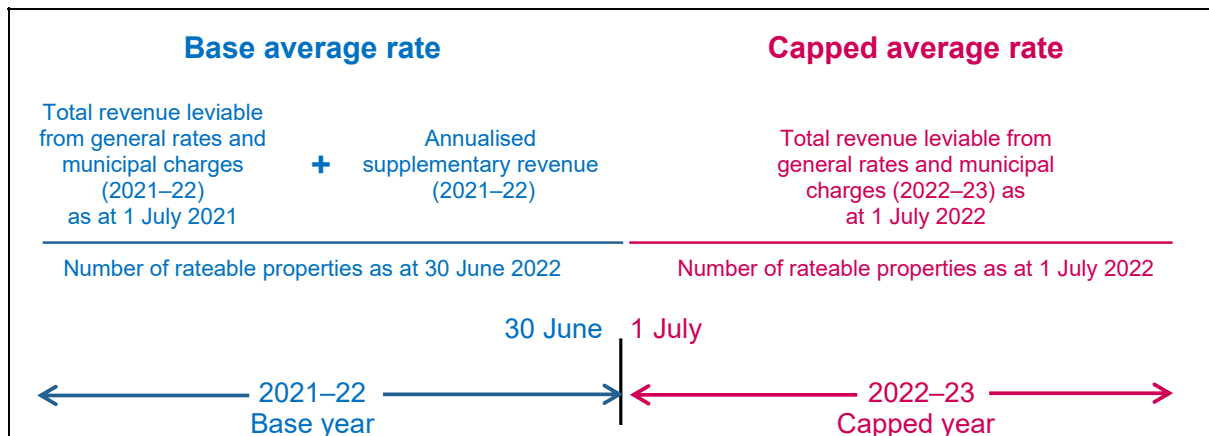
$$\text{Average rates} = \frac{\text{revenue from general rates and municipal charges}}{\text{number of rateable properties}}$$

Complying with the rate cap

A council must comply with the average rate cap set by general Order by the Minister for Local Government, or a higher cap set by special Order by us (if applicable). To comply, the capped average rate must not exceed the base average rate by more than the average rate cap or higher cap.

Compliance with the rate cap in the capped year is calculated in relation to the base average rate in the preceding rating year. For the 2022–23 financial year, the base year is 2021–22 and the capped year is 2022–23. Figure 1 summarises the calculation of the base average rate and capped average rate for the 2022–23 financial year.

Figure 1 Summary of the base average rate and capped average rate



³³ The minister has the power to prescribe other rates and charges to be included in the rate cap.

How to calculate the base average rate

The base average rate is the total annualised revenue leviable from general rates and municipal charges as at 30 June in the base year divided by the number of rateable properties as at 30 June in the base year. This calculation is shown below.

$$\text{Base average rate} = \frac{Rb}{L}$$

Rb = total annualised revenue leviable from general rates and municipal charges on rateable properties as at 30 June in the base year

L = number of rateable properties as at 30 June in the base year

For the 2022–23 rating year:

$$\begin{aligned} Rb &= \text{total revenue leviable from general rates as at 1 July 2021} \\ &\quad \text{(excluding any allowance for supplementary general rates revenue)} \\ &+ \\ &\quad \text{total revenue leviable from municipal charges as at 1 July 2021} \\ &\quad \text{(excluding any allowance for supplementary municipal charges revenue)} \\ &+ \\ &\quad \text{annualised supplementary general rates revenue as at 30 June 2022} \\ &+ \\ &\quad \text{annualised supplementary municipal charges revenue as at 30 June 2022} \\ L &= \text{number of rateable properties as at 30 June 2022} \end{aligned}$$

Note: cultural and recreational land (as defined under the Cultural and Recreational Land Act 1963) is excluded from the calculation of base average rate.

How to calculate annualised supplementary revenue

Annualised supplementary general rates revenue

= (total value of land as at 30 June in the base year – total value of land as at 1 July in the base year)

x rate in the dollar

= (total value of land as at 30 June 2022 – total value of land as at 1 July 2021)

x rate in the dollar (2021–22)

Annualised supplementary municipal charges revenue

= (number of rateable properties on which municipal charge is leviable as at 30 June in the base year – number of rateable properties on which municipal charge is leviable as at 1 July in the base year)

x municipal charge per property

= (number of rateable properties on which municipal charge is leviable as at 30 June 2022 – number of rateable properties on which municipal charge is leviable as at 1 July 2021)

x municipal charge per property (2021–22)

How to calculate the capped average rate

The capped average rate is the total revenue leviable from general rates and municipal charges as at 1 July in the capped year divided by the number of rateable properties as at 1 July in the capped year. This calculation is shown below.

$$\text{Capped average rate} = \frac{Rc}{L}$$

Rc = total revenue leviable from general rates and municipal charges on rateable properties as at 1 July in the capped year

L = number of rateable properties as at 1 July in the capped year

For the 2022–23 rating year

total revenue leviable from general rates as at 1 July 2022
(excluding any estimate for supplementary general rates revenue)

Rc = +

total revenue leviable from municipal charges as at 1 July 2022
(excluding any estimate for supplementary municipal charges revenue)

L = number of rateable properties as at 1 July 2022

Note: cultural and recreational land (as defined under the Cultural and Recreational Land Act 1963) is excluded from the calculation of capped average rate.

Appendix 3: Features of good financial planning and considering 'trade-offs'

Good financial planning

Central to the Fair Go Rates system is the promotion of good long-term financial planning. Throughout this guidance, we have emphasised that applications for a higher cap are expected to demonstrate that the need for additional funds is based on and supported by rigorous and robust long-term financial planning.

A simple description of good long-term financial planning includes:

- Ensuring that the assumptions in a council's long-term plans and financial strategies are based on reasonable and reliable information, by having best-practice processes, plans and policies in place that include:
 - sound policies and practices to manage cash resources and debt
 - good asset-management plans, to identify cost-effective outlays based on properly considered and documented risk management
 - performance monitoring and reporting.
- Effectively managing areas within the council's control, to deliver services and fulfil its functions cost-effectively, through methods that include:
 - undertaking programs of continuous improvement and efficiency
 - considering options and trade-offs for different models of funding, finance and service delivery
 - looking for opportunities to collaborate with other councils in shared services, etc.
- Undertaking regular service reviews to plan and prioritise service delivery, using effective engagement practices to identify community preferences while maintaining financial sustainability.
- Providing a stable and predictable rating burden on ratepayers to avoid rate shocks.
- Updating financial plans regularly, to reflect best-available information.

Having these elements in place helps a council ensure it bases its projections of long-term revenue and expenditure on robust and timely information. Good long-term financial planning can also identify potential opportunities and constraints, to aid good decision-making.

Trade-offs

There will inevitably be ‘trade-offs’ between different options that a council can consider, to determine the most appropriate approach to balancing its long-term funding need and the long-term interests of the community.

‘Trade-offs’ is a term that appears several times in this document, particularly in the context of choices presented in community engagement (section 4.2.3), and when council is examining expenditure proposals or funding options (section 4.2.5). When an application describes the trade-offs that were considered, we expect a clear statement that compares the financial impacts, service impacts and infrastructure impacts that arise from the choice of pursuing different options.

A council’s strategic approach to considering alternative options – and their potential impacts on ratepayers and the community – is a key element of sound long-term financial planning.