

BENTON ROAD, ELAMO ROAD & NAGOONDIE LANE, HEALESVILLE DECLARATION OF SPECIAL CHARGE

Report Author: Manager Infrastructure Services

Responsible Officer: Mark Varmalis

Ward(s) affected: Ryrie

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

Following an extensive consultation process with landowners, Council at its meeting of 12 April 2022 considered a report on road improvement works for Benton Road, Elamo Road & Nagoondie Lane, Healesville. Council resolved to advise of its intention to declare a special charge in accordance with the provisions of Section 163 of the Local Government Act 1989.

This report advises that two submissions have been received regarding the Special Charge and recommends that Council declare the Special Charge without modification.

RECOMMENDATION

That

- 1. Council, having given notice of its intention, reviewed the details of the proposed special charge and given consideration of submissions hereto, declare the special charge for works associated with the Benton Road, Elamo Road & Nagoondie Lane, Healesville Special Charge Scheme in accordance with the provisions of Section 163 of the Local Government Act 1989, without modification.***
- 2. In accordance with the provisions of Section 223 of the Local Government Act 1989, notice in writing be served on every person who has lodged a separate submission and in the case of a submission lodged on behalf of a number of persons, notice in writing to one of those persons, advising of Council's decision and the reasons for the decision.***
- 3. In accordance with the provisions of Section 163 of the Local Government Act 1989, notice be served upon all persons liable for the***

special charge advising of Council's decision and that persons aggrieved by Council's imposition of the special charge upon them, may apply to the Victorian Civil and Administrative Tribunal within 30 days of effective issue of the notice, for a review of the decision.

RELATED COUNCIL DECISIONS

At its meeting on 24 September 2019, Council considered a report regarding the Federal Government Road Construction Funding Initiative and adopted recommendations including:

- (a) Council endorse the roads listed in Attachment 1 (of that report) for construction utilising the Federal Government funding initiative; and
- (b) Landowner contributions to road construction projects funded by the Federal Government funding initiative be fixed at \$7,000 per development unit.

This report has been published on Council's website and is available by searching the Agenda for the 24 September 2019 Ordinary Meeting:

https://www.yarraranges.vic.gov.au/Council/Council-meetings/Minutes-and-agendas?dlv_OC%20CL%20Public%20Meetings=%28pageindex=4%29

At its meeting on 12 April 2022, Council considered a report regarding the Benton Road, Elamo Road & Nagoondie Lane, Healesville Intention to Levy a Special Charge and adopted recommendations including:

- (a) The affected landowners be advised of Council's intent to declare a special charge; and
- (b) The Chief Executive Officer be authorised to give public notice of the intent to declare a special charge.

This report has been published on Council's website and is available by searching the Agenda for the 12 April 2022 Ordinary Meeting.

https://www.yarraranges.vic.gov.au/Council/Council-meetings/Minutes-and-agendas?dlv_OC%20CL%20Public%20Meetings=%28pageindex=4%29

DISCUSSION

Purpose and Background

This Report recommends that Council declare a Special Charge Scheme for the construction of Benton Road, Elamo Road & Nagoondie Lane, Healesville, funded from the Roads for the Community Initiative (Federal Government Grant) and Landowner contributions.

In 2019 Council received \$150 Million Federal Government funding for sealing roads within the Dandenong Ranges and surrounding areas.

At its meeting of 24 September 2019 Council endorsed a list of roads to be constructed using Federal Government funding for sealing roads within the Dandenong Ranges and surrounding areas. Benton Road, Elamo Road & Nagoondie Lane, Healesville were included on the endorsed list of roads.

Consultation has occurred with landowners of Benton Road, Elamo Road & Nagoondie Lane, Healesville for the construction of the roads as a Special Charge Scheme.

Council at its meeting of 12 April 2022 resolved of its intention to declare a Special Charge in accordance with the provisions of section 163 of the Local Government Act 1989.

The mandatory minimum of 28 days since the publication of the public notice advising of Council's intention to declare the Special Charge and for receiving submissions concluded on 18 May 2022. The concurrent formal period, for receiving submissions, of 28 days from the date of publication of the public notice has also closed. In accordance with requirements of the Local Government Act 1989 Council must now consider any submissions received and determine whether to adopt, amend or abandon the scheme. If Council adopts or amends the scheme, the special charge may then be declared.

Recommended option and justification

In accordance with the provisions of Section 163 of the Local Government Act 1989 it is recommended Council declare a Special Charge Scheme for the construction of Benton Road, Elamo Road & Nagoondie Lane, Healesville funded from the Road for the Community Federal Government Grant and Landowner contributions.

Having regard to the need for the proposed works and given consideration of the submissions received, it is recommended that Council adopt and declare the special charge without modification.

FINANCIAL ANALYSIS

Following detailed design for the project the estimated cost of works has been determined as \$1,268,922.

Council's contribution to the project is estimated to be \$852,422 and will be grant funded by the Federal Government Roads for the Community Initiative.

On adoption of this report's recommendations the landowner contribution to the project will be fixed at \$416,500.

A breakdown of Council costs and individual property apportionment charges are listed in Attachment 1- Schedule of Costs per property. These items were detailed in the Intent to Levy a Special Charge Report, which was considered by Council at its meeting of 12 April 2022.

APPLICABLE PLANS AND POLICIES

The construction of local roads as a Special Charge Scheme meets the *Council Plan 2021-2025* strategic objective of Quality Infrastructure and Liveable Places. Local road construction also has benefits related to the strategic objective of a Vibrant Economy, Agriculture and Tourism.

Council's *Special Rate and Charge Policy for Infrastructure Improvements* sets out in detail the procedures for managing Special Charge Schemes.

This project is part of the Federal Government's sealing roads within the Dandenong Ranges and surrounding areas program.

RELEVANT LAW

Special Charge Schemes for Infrastructure Improvements are implemented under the Special Charge provisions of the *Local Government Act 1989* (version 159).

Council when considering a Special Charge Scheme is required to advertise the proposal and invite submissions from the public as prescribed in Section 223 of the *Local Government Act 1989* (version 159).

Implementation of the works will be carried out under Sections 8 and 10 of the *Local Government Act 2020* which identifies the role and powers of Councils.

SUSTAINABILITY IMPLICATIONS

Economic Impacts

The construction of these roads would be undertaken utilising contractors from Councils Road Construction and Associated Works Panel. This panel was established with a majority of local smaller contractors which will help provide economic support to these local businesses.

Social Impacts

Special Charge Schemes for road construction require sizeable contributions from abutting landowners. These contributions can lead to social and economic impacts for affected landowners. Council's *Special Rate and Charge Policy for Infrastructure Improvements* notes that those landowners with a demonstrated financial hardship may apply for assistance in accordance with Council's *Rate Recovery and Financial Hardship Policy*.

Environmental Impacts

The proposed works will require the removal of approximately 16 native trees and 4 exotic trees. These trees would be removed under Council's Code of Environmental Practice guidelines and will result in offset funding being provided for re planting of native vegetation as part of Councils Offset program. A planning permit is not required for trees removed under these guidelines.

All works will be completed in compliance with *Council's Code of Environmental Practice* for Works on Council Managed Land.

A Cultural Heritage Management Plan is not required for the works. The works will enhance the environmental amenity, through the reduction in dust.

The sealing of local roads will assist in reducing the impacts to the road condition from increased storm events, predicted as a result of climate change. Unsealed roads greatly deteriorate in condition following storm events creating an increased stress on service delivery for the unsealed road network.

Consideration is also given to the rate of flow of water into local creeks and impacts to water quality following the sealing local roads, sustainable treatment is prioritised, where possible within the catchment with measures such as grassy swales implemented as conditions allow.

As part of the construction of local roads, Council officers are continually investigating the increased use of recycled materials. In utilising recycled materials, officers consider the availability and location of materials, the quality of materials and overall cost to the project.

COMMUNITY ENGAGEMENT

Landowner Consultation

A letter was mailed to landowners inviting them to view an on-line briefing presentation detailing the standard of works and the statutory processes required to implement a Special Charge Scheme. The briefing presentation is available for viewing on Council's website.

Those landowners unable to access the internet were advised that a copy of the presentation and functional design plans could be mailed to them on request.

Public Notice

In accordance with Sections 163 (1A) and 223 of *the Local Government Act 1989* Council is required to give public notice of the intention to declare a special charge.

A public notice was published in The Star Mail local newspapers on 19 April 2022 and also on Council's Internet Website.

The public notice stated that submissions in respect of Benton Road, Elamo Road & Nagoondie Lane, Healesville Special Charge Scheme will be considered by Council, outlined the proposed declaration, set out the date on which it is proposed to make the declaration and advised that copies of the proposed declaration are available for inspection at Council's office for at least 28 days after the publication of the notice.

Notification of Landowners Involved

In addition to the public notice published in The Star Mail local newspapers and on Council's Internet Website, all owners of properties within the designated area of the special charge scheme were notified by mail of the proposed special charge, with an advisory notice and covering letter dated 13 April 2022.

Information relating to Council's intention to declare the special charge was extensively outlined, including the amount for which the person(s) is liable and the rights of a person to make a submission to the special charge.

Persons Right to Make a Submission

Section 163 of the *Local Government Act 1989* requires Council to consider any written submissions. These submissions should be received within 28 days after the publication of the public notice.

The formal submission period has now closed. Both the advisory notice served and the public notice published advised that submissions must be received by 18 May 2022.

Persons making a written submission to Council are also entitled to request to appear before Council to be heard in support of their written submission.

Council must now consider any submissions received and determine whether to adopt, amend or abandon the scheme. If Council adopts or amends the Scheme, the special charge may then be declared.

Submissions Received

Two written submissions have been received regarding Council's intention to declare a special charge for the Benton Road, Elamo Road & Nagoondie Lane, Healesville Improvement Works.

The designated area (Attachment 2) of the scheme comprises of 59 properties.

Summary of Submissions

The details of the submitters concerned have been excluded from this report in compliance with the *Privacy and Data Protection Act 2014*.

In accordance with Council's resolution when the Benton Road, Elamo Road & Nagoondie Lane, Healesville Intent to Levy a Special Charge Report was adopted, the submitters were offered a consultation meeting to discuss their submission.

Submission Number 1

A copy of the submission is included (Attachment 3) in this report. Note: Supporting plans included in the submission that identify the property have been redacted.

The submission supports the proposed Special Charge Scheme.

“...we are in favour of the proposed development...”

The submitters advise that they intend to construct a new driveway in the near future and seek confirmation the driveway will be reinstated as part of the road construction works.

Comment:

Council’s Project Engineer has advised that the driveway will be reinstated to match with the new road pavement height, as part of the works. Written confirmation via email has been sent to the submitter.

Submission Number 2

A copy of the submission is included (Attachment 4) in this report. Note: Supporting plans included in the submission that identify the property have been redacted.

The submitters request that their property be exempt from the Special Charge on the grounds that there is no vehicular access to the road being constructed and their property receives no benefit from the works.

Comment:

Construction of the roads would provide the following benefits/risk reduction to landowners:

- Continued and safer vehicular access to and from properties abutting or gaining primary access via the roads;
- Improved stormwater drainage runoff control directed towards the roads from abutting properties, and protection of low side properties from stormwater runoff from the roads; and
- Enhanced physical and environmental amenity for abutting properties.

Council’s Special Rate and Charge Policy for Infrastructure Improvements recognises that properties that directly abut road improvement works are deemed to derive special benefit and are therefore included in the scheme. As the property has a side abuttal and does not rely on driveway access to the road, a half share has been allocated to the property for contributing to the proposed Special Charge, in accordance with Council’s policy.

The submission also states that the submitters have a limited income, would need to borrow to repay the special charge and will experience financial hardship.

Comment:

It is appreciated that there will be landowners involved in the Roads for the Community initiative that will be in financial hardship, with the proposed contribution to the Special Charge for the improvement of their road adding to this situation. The proposed Special Charge that will lead to upgrading of their road will be a continuing benefit to their property for many years. A Special Charge is seen to apply to a property rather than an individual owner due to the lasting benefit that is provided.

For this reason, the Special Charge is apportioned based on the special benefit received by the property and is not reduced or waived based upon an individual owner's circumstances.

To assist landowners with payment of the Special Charge, options are available to pay the Charge over a 10 year period, with the addition of a financing charge.

Where landowners are experiencing demonstrated financial hardship, they may apply to Council for assistance in accordance with Council's *Rate Recovery and Financial Hardship Policy* where a review of their situation will be undertaken and options discussed for how the payment of the Charge can occur.

Note: An onsite consultation meeting was held with the submitters where Council's Financial Hardship Policy was explained.

Formal Notification to Landowners

Upon consideration of the submissions received and declaration of the special charge, the *Local Government Act 1989* requires those persons who have lodged a submission to be advised of Council's decision in relation to their submission.

All landowners are then to be formally notified of the special charge scheme and advised of their option to apply to the Victorian Civil and Administrative Tribunal for a review of Council's decision to introduce the special charge, as required by Section 185 of the Act.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Projects constructed under the Roads for Community Initiative have been jointly funded by the Federal Government and participating landowners.

The Federal Government funding commitment of \$150 Million over 10 years will have a transformational impact on unmade roads throughout the Dandenongs and urban growth areas of the municipality.

The key principles of the program are to construct unmade roads:

- Servicing schools, community facilities and sporting facilities;
- Within the urban growth boundary and township areas within Yarra Ranges;
- That significantly support bushfire risk and emergency situations to allow the community to safely exit areas of high risk;
- That support the growth and development of tourism across the municipality; and
- Where sections of high-volume rural roads intersect with collector/arterial roads.

In considering a strategic approach for future construction of unsealed roads, prioritisation and level of Council contribution required for Special Charge Scheme road construction under current policy, the proposed construction of Benton Road, Elamo Road & Nagoondie Lane, Healesville offers benefits as they are predominately urban in character and would complete an existing sealed road network.

RISK ASSESSMENT

Construction of the roads would provide the following benefits/risk reduction to landowners

- Continued and safer vehicular access to and from properties abutting or gaining primary access via Benton Road, Elamo Road & Nagoondie Lane, Healesville;
- Improved stormwater drainage runoff control directed towards the road from abutting properties, and protection of low side properties from stormwater runoff from the roads; and
- Enhanced physical and environmental amenity for abutting properties.

It is noted that the roads have existed in their current form for many years. If the proposed construction of the roads does not proceed, no unacceptable or unmanageable risk would be experienced by Council.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Schedule of Costs per Property
2. Designated Area of Scheme
3. Submission Number 1
4. Submission Number 2