

## **CAMPBELL ROAD, CROSELY STREET AND PILMER ROAD, HEALESVILLE DISCUSSION OF SPECIAL CHARGE SCHEME**

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Report Author:           Manager Infrastructure Services  
Responsible Officer:    Director Built Environment & Infrastructure  
Ward(s) affected:       Ryrie;

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*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**

Council at its meeting on 14 June 2022 considered a report relating to the proposed construction of Campbell Road, Crosley Street and Pilmer Road, Healesville and resolved to declare a special charge in accordance with the provisions of Section 163 of the *Local Government Act 1989*.

The construction of Crosley Street will help address road maintenance, dust and stormwater runoff issues which otherwise Council will be asked to consider at its cost, if the project does not proceed.

In March 2021, 81% of landowners responded in support of the scheme.

However, after the Declaration of the Special Charge and the VCAT appeals period had lapsed, a joint letter signed by various landowners in Crosley Street was received, raising objection to the inclusion of Crosley Street in the Special Charge Scheme.

In response (and outside of the legislated process), an additional survey of residents' support was undertaken to determine the extent of shift in support.

Landowners in Crosley Street only, were surveyed in October/November 2022 to gauge support for the Special Charge Scheme. The result was a slight majority of landowners did not support construction of the road (6 of 11).

It is recommended the scheme continues as declared in June 2022 and that Crosley Street remains as part of the Special Charge Scheme, on the basis that:

- The significant majority of landowners across the group of roads were in support of the Special Charge Scheme,
- The additional survey being conducted outside the SCS process, post

declaration under section 163 of the Local Government Act and post VCAT appeals period, and

- Rescinding a Scheme declared by Council under section 163 of the Local Government Act would undermine the robustness/legitimacy of future SCS decisions by Council,

## **RECOMMENDATION**

***That Crosley Street and abutting properties remain in the Campbell Road, Crosley Street and Pilmer Road, Healesville - Special Charge Scheme, and notify residents accordingly.***

## **RELATED COUNCIL DECISIONS**

At its meeting on 14 June 2022, Council declared a special charge for works associated with the Campbell Road, Crosley Street and Pilmer Road, Healesville Special Charge Scheme.

This report has been published on Council's website and is available by searching the Agenda for the 14 June 2022 Ordinary Meeting.

## **DISCUSSION**

### ***Purpose and Background***

Council at its meeting on 14 June 2022 considered a report relating to the proposed construction of Campbell Road, Crosley Street and Pilmer Road, Healesville and resolved to declare a special charge in accordance with the provisions of Section 163 of the *Local Government Act 1989*.

Prior to the declaration of a Special Charge landowners are informed and consulted about the project, and they have many opportunities to comment/object to the Special Charge Scheme throughout the statutory process which takes approx. six months to progress through. This includes the initial questionnaire, landowner briefing, intent to levy report, section 223 public notice and right to make a submission, declaration report and option to make VCAT application for review. Each step along the way landowners are sent correspondence and provided with avenues to discuss any concerns about the Special Charge scheme.

After formally declaring the special charge, all landowners forming part of the scheme were sent a formal notice from Council outlining the details of the charge and the right of appeal to VCAT.

There were no appeals received by VCAT and the statutory process had then reached completion. The next steps were to commence the tender/quotation process, commence construction and add the charge to the property.

The majority of Crosley Street landowners who had returned a questionnaire supported the scheme when the original landowner questionnaire was conducted in March 2021.

Crosley Street was included as a Special Charge Scheme as part of Campbell Road and Pilmer Road, Healesville to achieve efficiencies in the delivery of these three road construction projects.

The landowner questionnaire results conducted in March 2021-

- 31 responses in total (31 out of 34 properties - 91% response rate)
- With 25 responses (81%) in support
- With 6 responses (19%) against the scheme
- With 3 non-responses
- True support 74%- percentage of all landowners in support.

The individual results for Crosley Street-

- 9 out of 11 (81% of all properties) landowners responded
- 5 (56% of responses) supported the scheme
- 4 (44% of responses) opposed the scheme.
- 2 non-responses

A joint letter signed by various landowners in Crosley Street was received, raising objection to the inclusion of Crosley Street in the Special Charge Scheme. This was received well after the Special Charge had been formally declared by Council and the VCAT appeals period had also lapsed.

In response (and outside of the legislated process), an additional survey of residents' support was undertaken to determine the extent of shift in support.

Results were as follows:

- 11 (100%) of Crosley Street landowners responded to the questionnaire.
- 5 (45%) landowners supported the construction of Crosley Street, and
- 6 (55%) landowners opposed the construction of Crosley Street.

To highlight the shift in response to the scheme factoring in the results received outside of the completed legislated process:

- 33 responses in total (33 out of 34 properties - 97% response rate)
- 25 responses (76%) in support
- 8 responses (24%) against the scheme
- 1 non-response
- True support 74%

The support level of a Special Charge Scheme is based in the level of true support which is the number of landowners who support the proposal divided by the overall number of properties in the scheme.

The level of true support for the Special Charge Scheme has remained the same and is 74% of landowners in support.

Landowners were informed that Council would consider the results of the questionnaire before providing further advice.

The original five landowners that supported the construction of Crosley Street remained and continue to advocate for the sealing, with commentary outlining that upgrade works are required as properties on the low side of the road are significantly impacted by stormwater runoff and ongoing road/drainage maintenance concerns.

The slight shift in response on Crosley was a result of two previous non-respondents from the original survey indicating opposition when re-surveyed. This has not changed the level of true support for the project and only marginally impacted the Crosley Street results.

### ***Options Considered***

#### Option 1

The initial process of declaring the Campbell Road, Crosley Street and Pilmer Road, Healesville Special Charge Scheme was undertaken in line with Councils Special Charge Scheme policy. As part of this process landowners involved in the scheme were given opportunity to provide submissions to Council prior to the declaration of the scheme in opposition or support of the scheme.

Council considered a submission opposing the inclusion of Crosley Street in the scheme and resolved to declare the special charge unchanged as per the Declaration of Special Charge Report's recommendations.

Following declaration of the scheme, landowners are also provided the opportunity to appeal Councils decision at the Victorian Civil and Administrative Tribunal (VCAT). Landowners on Crosley St were advised of the impending deadline and there was no appeal to Councils decision presented to VCAT for this Scheme.

As the process for declaring this Special Charge Scheme was:

- undertaken in accordance with Councils policy.
- submissions from landowners received were considered by Council on declaration of the scheme.

- No appeals were lodged with VCAT for the scheme.

Council can maintain its decision to include Crosley Street properties within this Special Charge Scheme.

### Option 2

Based on the change of support, albeit outside of formal process, Council could vary the Campbell Road, Crosley Street and Pilmer Street, Healesville Special Charge Scheme. The variation of the scheme would involve a report being prepared for Council to consider removing the properties abutting Crosley Street from the scheme.

### ***Recommended option and justification***

Given that a correct and consistent process was followed, that no appeal was lodged for the Scheme via VCAT, the risks to the SCS process in rescinding a declared scheme and in order to address road maintenance, dust and stormwater runoff issues it is recommended that there is no variation of the Campbell Road, Crosley Street and Pilmer Road, Healesville Special Charge Scheme.

## **FINANCIAL ANALYSIS**

Following detailed design for the construction of Campbell Road, Crosley Street and Pilmer Road, Healesville the estimated cost of works was determined as \$864,209 and will be funded by the Federal Government Roads for the Community Initiative.

The landowner contribution to the project will be fixed at \$238,000 with an additional \$35,700 in financing costs.

## **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.

## **RELEVANT LAW**

Section 166 of the Local Government Act 1989 states that Council must ensure that those persons who are liable to pay a special charge which is varied are notified it is varied.

Legal Advice relating direct to the Healesville Special Charge Scheme with respect to the potential exclusion of Crosley Street is summarised as follows:

1. Council is under no legal obligation to exclude Crosley Street, however, Council can exclude Crosley Street;
2. Crosley Street could be excluded via a resolution of Council pursuant to section 166 of the *Local Government Act 1989* (LGA 1989), subject to assessment of requirements set out in section 166;
3. Notably, as the Variation of the Scheme is a decision regarding a rate, it should be made by the Council (that is, not under delegation).

A critical point is that the special charge has been declared and the relevant VCAT review period has expired. Therefore, the Council has no obligation to determine to vary the Scheme and, no doubt, careful consideration must be given as to its variation.

## **SUSTAINABILITY IMPLICATIONS**

### ***Economic Implications***

Refer to Social Impacts (below) for commentary on affected landowners and financial hardship.

The *Local Government Act 1989* recognises that a property receives a special benefit from construction of an abutting road. The economic benefit to an individual property is however difficult to quantify.

### ***Social Implications***

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 Implications***

No vegetation will be impacted on Crosley Street if construction of the road does not proceed.

## **COMMUNITY ENGAGEMENT**

Community engagement was outlined when Council originally considered and then declared the Special Charge Scheme for the construction of Campbell Road, Crosley Street and Pilmer Road, Healesville.

Additional engagement with Crosley Street landowners is detailed above.

Following the Scheme Declaration, Council Officers received enquiries from both the Healesville Action Group (HAG) and media from the Star Mail \_Star New Group.

Both enquired about the governance process and accepted that a majority of support was achieved prior to Declaration with no formal objections submitted at VCAT.

## **COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT**

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

## **RISK ASSESSMENT**

It was noted when the Special Charge Scheme was declared 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. Project Cost Summary