

OLD COACH ROAD (FROM NO.12 TO NO.37), MONTROSE DECLARATION OF SPECIAL CHARGE

Report Author: Special Charge Scheme Officer
Responsible Officer: Director Environment and Infrastructure
Ward(s) affected: Streeton;

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 24 May 2022 considered a report on road improvement works for Old Coach Road (from no.12 to no.37), Montrose. 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 (version 159)*.

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 Old Coach Road (from no.12 to no.37), Montrose Special Charge Scheme in accordance with the provisions of Section 163 of the Local Government Act 1989 (version 159), without modification.***
- 2. In accordance with the provisions of Section 223 of the Local Government Act 1989 (version 159), 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 (version 159), 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 that included an addendum to Council's *Special Rate and Charge Scheme Policy for Infrastructure Improvements*. The following recommendation was adopted:

Clause 4.6 of Council's *Special Rate and Charge Scheme Policy for Infrastructure Improvements* be amended by removing the landowner ceiling for projects not listed as a priority to be funded by the Federal Government funding initiative.

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

DISCUSSION

Purpose and Background

This Report recommends that Council declare a Special Charge Scheme for the construction of Old Coach Road (from no.12 to no.37), Montrose, funded from the Federal Government's Roads to Recovery allocation in Council's 2022/23 Capital Expenditure Program and Landowner Contributions.

Old Coach Road (from no.12 to no.37), Montrose is not included on the list of roads endorsed by Council for construction under the Roads for the Community funding program, as other roads across the municipality were prioritised higher than this road. The funding available under the Roads for the Community program is only sufficient to fund the improvement of approximately 180 kms of Council's 740 km unsealed road network.

Council's contribution to the project is estimated to be \$110,278 (58% of project cost). This contribution comprises \$79,126 calculated by means of through traffic, in accordance with Council Policy and \$31,152 for works abutting Crown Land (Dandenong Ranges National Park). Landowners will fund the balance of road construction costs.

Consultation has occurred with landowners of Old Coach Road (from no.12 to no.37), Montrose for the construction of the road as a Special Charge Scheme.

Council at its meeting of 24 May 2022 resolved of its intention to declare a Special Charge in accordance with the provisions of section 163 of the *Local Government Act 1989 (version 159)*.

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 29 June 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 (version 159)* 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.

Landowner support for the Project

In March 2021 landowners along Old Coach Road (from no.12 to no.37), Montrose were surveyed to determine the level of support for a landowner funded Special Charge Scheme to construct the road. Results were as follows.

- 9 (82%) of landowners responded to the survey.

Of those landowners who responded to the survey:

- 6 (67%) supported the proposed Special Charge Scheme; and
- 3 (33%) opposed the proposed Special Charge Scheme.

Recommended option and justification

In accordance with the provisions of Section 163 of the *Local Government Act 1989 (version 159)* it is recommended Council declare a Special Charge Scheme for the construction of Old Coach Road (from no.12 to no.37), Montrose funded from the Federal Government's Roads to Recovery allocation in Council's 2022/23 Capital Expenditure Program 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 \$189,404.

Council's contribution to the project is estimated to be \$110,278 (58% of project cost) and will be funded by the Federal Government's Roads to Recovery allocation in Council's 2022/23 Capital Expenditure Program.

On adoption of this report's recommendations the landowner contribution to the project is estimated to be \$79,126 (42% of project cost).

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 24 May 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.

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

Construction of the road 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 not require vegetation removal. 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 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 of 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 (version 159)* 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 31 May 2022 and also on Council's Internet Website.

The public notice stated that submissions in respect of Old Coach Road (from no.12 to no.37), Montrose 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 25 May 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 (version 159)* 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 29 June 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 Old Coach Road (from no.12 to no.37), Montrose Improvement Works.

The designated area (Attachment 2) of the scheme comprises of 11 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 Old Coach Road (from no.12 to no.37), Montrose 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.

The submission supports the proposed Special Charge Scheme on the following grounds:

- "road safety, particularly at corners near numbers 21, 29 and 33;

- reduction/elimination of dust during dry weather impacting properties, especially on the downhill side of the road;
- consequent cleanliness of rainwater collection for the properties (most of which are dependent on this as they are not connected to town water);
- reduction in road maintenance/treatment which is required three to four times each year;
- driveway access which is impacted by the road level which increases after each treatment; and
- better drainage which will reduce impact of storm events on properties on the downhill side of the road.”

Submission Number 2

A copy of the submission is included (Attachment 4) in this report.

The submission supports the proposed Special Charge Scheme on the following grounds:

- “The removal of Dust during Summer which pollutes our drinking water as we only have water tanks with water from our roofs;
- There have been many accidents resulting from the loose gravel surface – ‘Through traffic’ should be stopped or severely discouraged by traffic management devices; and
- Costs to maintain the road and drainage will be reduced significantly”.

Formal Notification to Landowners

Upon consideration of the submissions received and declaration of the special charge, the *Local Government Act 1989 (version 159)* 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 *Local Government Act 1989 (version 159)*.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

As a result of landowner consultation, majority support has been identified from landowners along Old Coach Road (from no.12 to no.37), Montrose for implementing a Special Charge Scheme for sealing the road and drainage improvement works.

The purpose of the special charge is to improve safety, amenity and accessibility for landowners involved.

The project will be jointly funded by abutting Landowners and Council (using the Federal Government's Roads to Recovery allocation in Council's 2022/23 Capital Expenditure Program).

RISK ASSESSMENT

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

- Continued and safer vehicular access to and from properties abutting or gaining primary access via Old Coach Road (from no.12 to no.37), Montrose;
- Improved stormwater drainage runoff control directed towards the road from abutting properties, and protection of low side properties from stormwater runoff from the road; and
- Enhanced physical and environmental amenity for abutting properties.

It is noted that the road has existed in its' current form for many years. If the proposed construction of the road 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