

BRETRY WAY, MONTROSE DECLARATION OF SPECIAL CHARGE

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

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 July 2022 considered a report on road improvement works for Bretby Way, 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.

This report advises that three submissions have been received regarding the Special Charge and recommends that Council declare the Special Charge with 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 Bretby Way, Montrose Special Charge Scheme in accordance with the provisions of Section 163 of the Local Government Act 1989, with the following modifications:***
 - (a) ***The development unit allocation to property 13 Bretby Way, Montrose be reduced from 2 to 1 Unit.***
 - (b) ***The development unit allocation to property 15 Bretby Way, Montrose be reduced from 2 to 1 Unit.***
 - (c) ***The development unit allocation to property 19-21 Bretby Way, Montrose be reduced from 2 to 1 Unit.***
 - (d) ***The development unit allocation to property 31 Bretby Way, Montrose be reduced from 2 to 1 Unit.***

- (e) Council's contribution to the project be increased by 4 development units to offset the reduced contribution by these properties.**
- 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

1. 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.yarranges.vic.gov.au/Council/Council-meetings/Minutes-and-agendas?dlv_OC%20CL%20Public%20Meetings=%28pageindex=4%29

2. At its meeting on 12 July 2022, Council considered a report regarding Bretby Way, Montrose 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 July 2022 Ordinary Meeting.

https://www.yarranges.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 for Bretby Way, Montrose, 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. Bretby Way, Montrose was included on the endorsed list of roads.

Consultation has occurred with landowners of Bretby Way, Montrose for the construction of the road as a Special Charge Scheme.

Council at its meeting of 12 July 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 17 August 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.

Landowner support for the Project

In February 2021 landowners along Bretby Way and Emery Lane were surveyed to determine the level of support for a landowner funded Special Charge Scheme to construct their roads. Results were as follows.

- 18 (82%) of landowners responded to the survey.

Of those landowners who responded to the survey:

- 15 (83%) supported the proposed Special Charge Scheme; and
- 3 (17%) opposed the proposed Special Charge Scheme.

Although the two roads (Emery Lane and Bretby Way) were surveyed together a majority support was received for both individual roads within the Scheme. As such Bretby Lane has majority support.

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 Bretby Way, Montrose funded from the Roads 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 with modification.

FINANCIAL ANALYSIS

Review of Allocated Charge

The charge allocation for the below properties has been reviewed after reassessment of the potential for intensive development. Based on the area of these properties and the Planning Scheme Zones (NRZ1 & 3 - Neighbourhood Residential Zone Schedules 1 & 3 and PUZ1 – Public Use Zone), it is recommended the development unit allocation be reduced from 2 units to 1 unit.

The reviewed charge aligns with those allocated in previous Special Charge Schemes funded by the Federal Government Road Construction Funding Initiative, undertaken in the same Planning Scheme Zones.

Property	Area	Planning Zone	Allocated Charge	Reviewed Charge
13 Bretby Way	3973m ²	NRZ3	2 Development Units	1 Development Unit
15 Bretby Way	2907m ²	NRZ3	2 Development Units	1 Development Unit
19-21 Bretby Way	3879m ²	NRZ3	2 Development Units	1 Development Unit
31 Bretby Way	3259m ²	NRZ1 & PUZ1	2 Development Units	1 Development Unit

Following detailed design for the project the estimated cost of works has been determined as \$488,170.

Council's contribution to the project is estimated to be \$391,920 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 \$96,250.

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 July 2022 and amended as per this report's recommendations.

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*.

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*.

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 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 consulting arborist for this project has assessed that all trees along the road are likely to be retained, vegetation removal will be confined to small Burgan and Tea Tree next to the road.

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 July 2022 and also on Council's Internet Website.

The public notice stated that submissions in respect of Bretby Way, 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 13 July 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 17 August 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

Three written submissions have been received regarding Council's intention to declare a special charge for the Bretby Way, Montrose Improvement Works.

The designated area (Attachment 2) of the scheme comprises of 16 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 Emery Lane, Montrose - Bretby Way, Montrose & Welham Road, Mooroolbark Intent To Levy 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, a consultation meeting with the submitter and Officers from Council's Roads for the Community Team was held onsite.

The submission objects on the grounds that the submitter's property is addressed as Mount Dandenong Road and has been allocated one development unit charge instead of one half development unit charge.

Comment:

The property gains primary access via Bretby Way and in accordance with Council's *Special Rate and Charge Policy for Infrastructure Improvements* (Clause 4.6.1) has been allocated one development unit.

The submission also objects on the grounds that, after the road is constructed, the Capital Improved Value of the submitter's property will increase and therefore the general rates levied on the property will also increase. The submitter advises that they are a pension concession holder and will experience financial hardship as a result of having to repay the special charge and associated financing costs over the 10 year period of the Special Charge Scheme.

Comment:

The charge allocated to properties involved in the Bretby Way, Montrose Special Charge Scheme will be fixed at \$7,000 per development unit, in accordance with Council policy.

As listed in Attachment 1 - Schedule of Costs per Property, this results in a subsidy for landowners of \$240,873 over and above Council's normal 20% contribution towards Special Charge Scheme projects, equating to a landowner saving per development unit of \$17,518.

It is acknowledged that some landowners involved in the Roads for the Community initiative that will be in financial hardship, and the proposed contribution to the Special Charge for the improvement of their road will add to this situation. The proposed Special Charge will lead to upgrading their road will continue to benefit the 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.

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.

The submitter raised concerns at the onsite meeting regarding the costs of driveway reinstatement after road construction, road alignment and vegetation removal.

Comment:

The submitter was advised that the existing concrete apron adjacent to the submitter's driveway would be reinstated to match into the back of the new kerb of the constructed road. They were further advised the (constructed) road would follow the existing alignment.

The consulting arborist for this project has assessed that all trees along the road are likely to be retained, vegetation removal will be confined to small Burgan and Tea Tree next to the road.

Submission Number 2

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

The submitters state that they will not contribute towards the Special Charge Scheme, that Council has received a grant from the Federal Government for the works and that the charge will be a strain on affected landowners in the current economic climate.

Comment:

Following a consultation process, which included a landowner survey that returned significant support for the proposal, Council at its meeting of 12 July 2022 considered a report on road improvement works for Bretby Way, 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*.

At its meeting on 24 September 2019 Council endorsed a list of roads to be constructed using funding provided by the Federal Government to seal roads within the Dandenong Ranges and surrounding areas. Bretby Way, Montrose was included on this list of roads.

At the same meeting Council decided to fix landowner charges for roads constructed under the Federal funding program at \$7,000 per development unit.

As listed in Attachment 1 - Schedule of Costs per Property, this results in a subsidy for landowners of \$240,873 over and above Council's normal 20% contribution towards Special Charge Scheme projects, equating to a landowner saving per development unit of \$17,518.

It is acknowledged 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 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.

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.

Submission Number 3

A copy of the submission is included (Attachment 5) in this report.

The submitter states that constructing the road would compromise the rural bush setting of Montrose, which is the reason that many choose to live in the area. The submitter raises serious concerns regarding the environmental impact on both flora and fauna of the proposed works.

Comment:

The consulting arborist for this project has assessed that all trees along the road are likely to be retained, vegetation removal will be confined to small Burgan and Tea Tree next to the road.

The arborist further advised “There will be some pruning that needs doing on a branch over the roadway, but the trees should be retained with appropriate tree protection measures during works.”

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

The submission objects on the grounds that the works are unnecessary and will have negative impacts on affected landowners due to excessive costs and disruption to daily living, in addition to the loss of bush ambience.

Comment:

Landowner support for the project was obtained when the landowner survey was conducted in February 2021, results were detailed in the Intent to Levy a Special Charge Report considered by Council at its meeting of 12 July 2022.

The charge allocated to properties involved in the Bretby Way, Montrose Special Charge Scheme will be fixed at \$7,000 per development unit, in accordance with Council policy.

As listed in Attachment 1 - Schedule of Costs per Property, this results in a subsidy for landowners of \$240,873 over and above Council’s normal 20% contribution towards Special Charge Scheme projects, equating to a landowner saving per development unit of \$17,518.

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.

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.

Every attempt is made to keep disruptions to a minimum throughout road construction. Due to the nature and extent of the works there would likely be some disruptions to property access and traffic flow. Such disruptions would occur during normal construction working hours from 7.30 am to 4.30 pm on weekdays.

Emergency access for local residents will remain a priority however, there will be occasions throughout the day when traffic flow will be temporarily halted for up to 15 minutes.

The submission also objects on the grounds that the submitter's property has been allocated a charge of 2 development units, although the submitter states their property is not capable of intensive development.

Comment:

The charge allocation for the submitter's property has been reviewed after reassessment of the potential for intensive development. Based on the area of the property and the Planning Scheme Zoning, it is recommended the development unit allocation be reduced from 2 units to 1 unit.

The submission questions the contribution of Melbourne Water, as a landowner on Bretby Way, towards the Special Charge Scheme.

Comment:

Melbourne Water property is Crown Land and as such can not be levied a Special Charge, in accordance with Section 221 of the *Local Government Act 1989*.

Council's Policy is to contribute towards Special Charge Schemes, on behalf of Crown Land. The Council contribution on behalf of the Melbourne Water property (Crown Land) towards this project is estimated to be \$66,767 as outlined in Attachment 1.

The submitter has requested acknowledgement of their submission and wishes to be notified of the Council meeting where their submission will be considered.

Comment:

Acknowledgement of the submission has been emailed to the submitter along with details of the date of the Council meeting and instructions on how to register online if they wish to speak at the meeting in support of their submission.

In accordance with Council's resolution when the Emery Lane, Montrose - Bretby Way, Montrose & Welham Road, Mooroolbark Intent To Levy Special Charge Report was adopted, the submitters were offered a consultation meeting to discuss their submission.

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 *Local Government Act 1989*.

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 prioritisation approach as outlined by the principles above the proposed construction of Bretby Way, Montrose offers aligned benefits as it's inside the urban growth boundary and would complete an existing sealed road network.

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 Bretby Way, 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; and
5. Submission Number 3