

CEDAR COURT, BURNS WAY, LOCH AVENUE, HARVEST CLOSE AND MAYVIEW DRIVE, MONBULK DECLARATION OF SPECIAL CHARGE

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

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 26 July 2022 considered a report on road improvement works for Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk. 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 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 Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk Special Charge Scheme in accordance with the provisions of Section 163 of the Local Government Act 189, with the following modification.***
 - (a) The development allocation to property 9 Harvest Close, Monbulk be reduced from 2 to 1 unit.***
 - (b) Council's contribution to the project be increased by 1 development unit to offset the reduced contribution by this property.***

- 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:

- Council endorse the roads listed in Attachment 1 (of that report) for construction utilising the Federal Government funding initiative; and
- 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 26 July 2022, Council considered a report regarding the Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk Intention to Levy a Special Charge and adopted recommendations including:

- The affected landowners be advised of Council's intent to declare a special charge; and
- 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 26 July 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 Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk, 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. Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk were included on the endorsed list of roads.

Consultation has occurred with landowners of Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk for the construction of the road as a Special Charge Scheme.

Council at its meeting of 26 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 31 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 April and May 2021 landowners along Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk were surveyed to determine the level of support for a landowner funded Special Charge Scheme to construct their roads. Results were as follows.

- 48 (77%) of landowners responded to the survey.

Of those landowners who responded to the survey:

- 37 (77%) supported the proposed Special Charge Scheme;
- 10 (21%) opposed the proposed Special Charge Scheme; and
- 1 (2%) was undecided.

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 Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk funded from the Road for the Community Federal Government Grant and Landowner contributions.

Having regard to the need for the proposed works, it is recommended that Council adopt and declare the special charge with modification.

FINANCIAL ANALYSIS

Review of allocated charge

It is recommended the development unit allocation to property 9 Harvest Close, Monbulk be reduced from 2 to 1 unit. Council's Planning Department have advised that a planning permit for a 2 lot subdivision on this property has expired. The property no longer meets development potential criteria for roads constructed under the Roads for the Community Program.

Following detailed design for the project the estimated cost of works has been determined as \$1,599,295.

Council's contribution to the project is estimated to be \$1,175,795 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 \$423,500.

A breakdown of Council costs and individual property apportionment 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 26 July 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*.

Council when considering a Special Charge Scheme is required to advertise the proposal and invite submissions from the public as prescribed in 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 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 2 exotic trees. These trees would be removed under Council's Code of Environmental Practice guidelines. 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 2 August 2022 and also on Council's Internet Website.

The public notice stated that submissions in respect of Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk 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 27 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 31 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

Two written submissions were received regarding Council's intention to declare a special charge for the Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk Improvement Works.

The designated area (Attachment 2) of the scheme comprises of 62 properties.

Summary of Submission

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 Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk 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. The submission included photos of potholes and erosion on parts of Rankins Road. These photos have not been included in the attachment.

The submission requests that the section of Rankins Road from David Hill Road to Mayview Drive be included in the Special Charge Scheme. The submission states that this section of Rankins Road experiences high traffic volumes and maintenance issues.

Comment

At the meeting held on 24 September 2019, Council endorsed a priority list of unsealed roads proposed for construction utilising funding announced by the Federal Government. Rankins Road, Monbulk (from David Hill Road to no. 49 Rankins Road) was included in the priority list with construction, subject to landowner support and

successful completion of the Special Charge Scheme Statutory Process, anticipated in the 2026/27 financial year.

It is not possible to include the section of Rankins Road (from David Hill Road to Mayview Drive) in this Special Charge Scheme as landowner support for construction of this section of road has not been determined and funding for construction of Rankins Road, Monbulk (from David Hill Road to no. 49 Rankins Road) has been allocated in Council's Capital Expenditure Program for the year 2027/28.

Rankins Road is graded four times per year and Councils Asset Maintenance department advise requests for maintenance on the road are not excessive for an unconstructed road.

Submission Number 2

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

The submission states that Mayview Drive is a commercial road and that residents should not be funding construction of the road. The submission further states that the road is used as a school drop off and access for Monbulk College.

Comment

The *Local Government Act 1989* removed the distinction between Government Roads, public highways and private streets. All roads are now assessed on an equal basis.

Mayview Drive is included on Council's Road Register and is maintained by Council.

The *Local Government Act 1989* allows Council to introduce a special charge where the works/project will be of special benefit to specific landowners.

Properties sharing a boundary with Mayview Drive will generally receive special benefits from construction of the road such as reduction of noise and dust, protection from drainage runoff, collection of drainage runoff, improved property access, improved road safety and general property amenity improvement.

Landowner contributions to road construction projects funded by the Federal Government funding initiative are fixed at \$7,000 per development unit.

As listed in Attachment 1 Schedule of Costs per Property, this results in a subsidy for landowners of \$746,418 over and above Council's normal 20% contribution towards Special Charge Scheme projects, equating to a landowner saving per development unit of \$12,023.

Monbulk College does not abut Mayview Drive, access to the College is gained via David Hill Road. No standing signage and bollards have been installed at the northern end of Mayview Drive to discourage pedestrian drop off to the nearby College.

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 Cedar Court, Burns Way, Loch Avenue, Harvest Close and Mayview Drive, Monbulk offers benefits as they are within the urban growth boundary and would connect to 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 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.

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. Attachment Number 1 (Photos not included); and
4. Attachment Number 2