

## HENRY STREET, YARRA JUNCTION - INTENTION TO LEVY A SPECIAL CHARGE

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Report Author: Special Charge Scheme Officer  
Responsible Officer: Director Environment & Infrastructure  
Ward(s) affected: O'Shannassy

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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

As part of its 2019 budgetary process, the Federal Government announced a nine year, \$150 Million funding initiative for Yarra Ranges Council to seal roads within the Dandenong Ranges and surrounding areas. This funding program has been named the Roads for the Community Initiative.

At its meeting on 24 September 2019 Council endorsed a list of roads to be constructed using this funding to be facilitated by means of Special Charge Schemes. Henry Street, Yarra Junction was included on this list of roads.

This report recommends affected landowners be notified of Council's Intent to Levy a Special Charge for the construction of Henry Street, Yarra Junction.

### RECOMMENDATION

***That***

- 1. The affected landowners be advised of Council's intent to declare a special charge ("the special charge") at its meeting scheduled for 29 November 2022, or should this meeting not proceed then the next available Council meeting, for the purpose of defraying expenses associated with proposed improvement works in Henry Street, Yarra Junction.***
- 2. Subject to any variation of a scheme under Section 166 of the Local Government Act 1989, the amount to be levied under the scheme exclusive of interest payable under Section 172 of the Local Government Act 1989 will be:***

- (a) *In total \$228,642 (“the amount to be paid”); comprising of \$192,500 for the cost of works and \$36,142 for financing cost.*
- (b) *On each date specified under Section 167 of the Local Government Act 1989 as being the date on which the whole of rates and charges (other than special rates and charges) is due (“the due date”) the amount represented by the formula: X/Y where X represents the amount to be paid and Y represents the number of due dates during the period which the scheme will remain in force.*
3. *In accordance with Section 163 (3) of the Local Government Act 1989 Council specifies that the special charge:*
- (a) *Is proposed to be declared for the land in the “designated area” shown on the attached plan.*
- (b) *Will be payable in respect of all rateable land within the designated area.*
- (c) *Will be assessed and levied as set out in this resolution.*
- (d) *Will remain in force for the period commencing on 1 July 2023 and concluding on 30 June 2033.*
- (e) *Will expire if the special charge is not levied to each person liable to pay it within 12 months after the day on which the declaration to which the rate or charge relates is made.*
4. *In accordance with Section 221 of the Local Government Act 1989 the special charge is also proposed to be declared in respect of land within the designated area which is not rateable land and is not Crown land.*
5. *It is recorded that assessment of the special charge is calculated on the following basis:*
- (a) *\$7,000 per development unit*
- (b) *Plus financing cost of 3.755% per annum.*
- (c) *100% on a development unit basis as follows.*
- i. *Special benefit where a dwelling or building is permitted.*
- ii. *The degree of special benefit having regard to the use or future use of the land.*
6. *The amount assessed, based on the assessment factors, is set out in the attached schedule of costs per property for the scheme.*
7. *In accordance with section 167 (4) of the Local Government Act 1989, landowners be offered an option to repay their charge as a lump sum payment. For landowners to undertake this option, full payment is to be made by 15 February 2024, and the proportion of the cost to finance the scheme attributable to the property is to be deducted from the total charge.*
8. *The Chief Executive Officer be authorised to give public notice of the intent to declare the special charge in accordance with Section 163 (1A)*

**and 223 of the Local Government Act 1989 in The Star Mail newspapers and on Council's Internet Website.**

- 9. If required a consultation meeting with appropriate Council Officers, be arranged to discuss any submissions received relating to the Special Charge.**
- 10. If submissions are made:**
  - (a) Those submissions be considered, and any person (or their representative as specified in their submission) who has requested to be heard in support of their submission be heard, by a meeting of Council scheduled for 29 November 2022, or should this meeting not proceed then the next available meeting.**
  - (b) Those persons making submissions be advised copies of their submissions will be made available at the Council meeting held when their submission is considered.**
- 11. If no submissions are made, the matter be reported to Council at the meeting scheduled for 29 November 2022, or should this meeting not proceed then the next available meeting.**
- 12. The Chief Executive Officer be authorised and directed to seek payment of and recover the special charge with any interest thereof.**

## **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:

1. Council endorse the roads listed in Attachment 1 (of that report) for construction utilising the Federal Government funding initiative; and
2. 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](https://www.yarraranges.vic.gov.au/Council/Council-meetings/Minutes-and-agendas?dlv_OC%20CL%20Public%20Meetings=%28pageindex=4%29)

## **DISCUSSION**

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

In accordance with Council's *Special Rate and Charge Policy for Infrastructure Improvements*, landowner support has been sought and obtained for construction of Henry Street, Yarra Junction.

The project has been listed in Council's 2021/22 - 2023/24 Capital Expenditure Program, funded from the Roads for the Community Initiative (Federal Government Grant) and Landowner contributions.

Design is complete, and the project is ready to proceed to the statutory phase.

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

That Council advise affected landowners of its intent to declare a special charge for the Henry Street, Yarra Junction Improvement Works Special Charge Scheme, in accordance with the provisions of the *Local Government Act 1989*.

It is recommended that Council at its meeting scheduled for 29 November 2022 or should this meeting not proceed then the next available meeting, following the consideration of any submissions, determine whether to adopt, amend or abandon the scheme. If Council adopts or amends the scheme, the special charge may then be declared.

The special charge is then levied by sending a notice under Section 163 (4) of the *Local Government Act 1989* to the persons liable to pay the charge.

Following the levying of the charge a person under Section 185 of the *Local Government Act 1989* aggrieved by the imposition of the special charge on that person, may within 30 days after the date of effective issue of the notice levying the charge, apply to the Victorian Civil and Administrative Tribunal for a review of the decision.

### ***Description of Improvement Works***

- Approximately 275m of asphalt pavement 5.5 metres trafficable width with concrete rollover kerb and channel on both sides of the road and associated underground longitudinal drainage as required;
- Concrete vehicle crossing for 14 & 16 Henry Street to provide turn around for waste vehicles; and
- Reinstatement of vehicle crossovers.

These works are considered to be of an appropriate standard to service Henry Street, Yarra Junction and are not in excess of the standard which would normally be adopted by Council for the improvement of a local road.

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

A search of Council's records indicates that Henry Street, Yarra Junction has not previously been constructed to the satisfaction of Council under Section 163 of the *Local Government Act 1989* or under Division 10 of Part XIX or Part XIII of the *Local Government Act 1958*.

### ***Designated Area***

A special charge is proposed to be declared in respect of the properties within the designated area, being those properties that abut or gain primary access via Henry Street, Yarra Junction as shown in Attachment 2.

These properties are considered to be naturally coherent in accordance with the Ministerial Guideline on Special Rates and Special Charges.

### ***Special Charge Scheme***

A Special Charge Scheme has now been prepared for Henry Street, Yarra Junction, to allow Council to advise of its intent to declare a special charge.

Attached is a calculation of Special Benefit and Maximum Total Levy, a plan showing the designated area, an estimate of cost of works and a schedule of costs per property for the road improvement works.

## **FINANCIAL ANALYSIS**

Based on preliminary estimates for road improvements Henry Street, Yarra Junction an amount of \$415,315 has been allocated in Council's 2021/22 to 2023/24 Capital Expenditure Program Budgets.

Following detailed design for the project the estimated cost of works has been determined as \$477,526 as shown in Attachment 3. The increase to budget estimate is associated with an increase in current road construction costs including items such as kerb and channel and underground drainage.

Additional Council funding for these works, if required after the tender process, will be sourced from savings on completed Roads for the Community construction projects or from funds that were allocated to projects that did not proceed due to insufficient landowner support. At its meeting on 24 September 2019 Council resolved that Landowner contributions to road construction projects funded by the Federal Government funding initiative be fixed at \$7,000 per development unit.

Council's contribution to the project is estimated to be \$285,026 and will be funded by the Federal Government Roads for the Community Initiative.

The landowner contribution to the project will be fixed at \$192,500 (subject to the outcome of any submissions to the Special Charge Scheme).

As listed in Attachment 4 – Schedule of Costs per Property, this results in a subsidy for landowners of \$189,521 over and above Council's normal 20% contribution towards Special Charge Scheme projects, equating to a landowner saving per development unit of \$6,892.

Through the process of tendering, delivering and finally costing the overall project, any savings would first be directed towards this subsidy prior to proportionately sharing with landowners as described in Council's Special Charge Scheme policy.

This estimate has been prepared based upon previous works carried out throughout the municipality and includes a 10% contingency amount.

***Scheme Details***

Estimated Project Cost	\$477,526
<u>Less</u> Council Cost only Items	\$0
<b>Estimated Scheme Cost</b>	<b>\$477,526</b>
<u>Less</u> Council's 20% Contribution	\$95,505
<u>Less</u> Subsidy for Federal Government Funding Ceiling of \$7,000 per benefit unit	\$189,521
<b>Balance of estimated cost to be recovered from landowners (excluding financing costs)</b>	<b>\$192,500</b>

Details of the calculation of special benefit and maximum total levy are set out in Attachment 1 – Special Benefit and Maximum Total Levy.

***Financing Costs***

Funding of the landowner component of the project is to be provided through loans. The financing cost rate is determined from Council's latest borrowings. The financing cost rate applicable is 3.755% based on latest borrowings rates for a ten-year period.

Financing costs are to be recovered from landowners who choose not to pay in full by 15 February 2024. Total landowners' estimated share for the works is \$192,500 plus an amount of \$36,142 for financing costs. These financing costs have been separately accounted for in the debt servicing budget.

**General Scheme Information**

***Period for Which Special Charge Remains in Force***

The special charge remains in force for the period commencing 1 July 2023 and concluding on 30 June 2033, or until paid in full, with any interest thereon.

***Date of Payment***

A notice pursuant to Section 167 (3) of the *Local Government Act 1989* shall be issued with payment due on 15 February 2024. If a person elects to pay general rates and charges by instalments or any other method available, the special charge will be paid in the same manner.

It is recommended the Chief Executive Officer be authorised and directed to seek payment of and recover the special charge with any interest thereon.

### ***Incentives for Prompt Payments***

No incentives will be offered for prompt payment prior to the prescribed date of payment.

### ***Variation***

The details and particulars of the special charge shall remain in force unless varied by Council in accordance with the *Local Government Act 1989*.

## **APPLICABLE PLANS AND POLICIES**

This report contributes to the following strategic objective(s) in the Council Plan:

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 Henry Street, Yarra Junction 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.

### ***General Environmental Impacts for Henry Street, Yarra Junction***

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 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**

In May/June 2021 landowners along Henry Street, Yarra Junction were surveyed to determine the level of support for a landowner funded Special Charge Scheme to construct their roads. Results were as follows.

- 14 (58%) of landowners responded to the survey.

Of those landowners who responded to the survey:

- 11 (79%) supported the proposed Special Charge Scheme;



- 2 (14%) opposed the proposed Special Charge Scheme; and
- 1 (7%) was undecided.

Landowners were advised that sufficient landowner support for the proposed Special Charge Scheme had been identified and design would commence.

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.

## **FURTHER CONSULTATION**

### ***Public Notice***

Council is required to publish a public notice, a copy of which must be sent to each person who will be liable to pay the special charge, within three working days of the day on which the public notice is published. The public notice must state which persons have a right to make a submission to the proposed declaration, and how those persons may make a submission. Submissions in writing must be lodged with the Council within 28 days of the day on which the public notice is published.

In addition, the public notice must contain an outline of the proposed declaration, set out the date on which it is proposed to make the declaration and advise that copies of the proposed declaration are available for inspection at Council's Community Links for at least 28 days after the publication of the notice.

The public notice will advise a copy of the proposed declaration is available online by searching Council's website for the Agenda of the 27 September 2022 Council meeting.

It is recommended that Council authorise the publication of this statutory notice in The Star Mail local newspapers and on Council's internet website.

### ***Submissions***

Council or a Delegated Committee of Council is required to consider any written submissions. These submissions should be received by Council by a date specified in the notice which is not less than 28 days after the publication of the above notice.

Persons making a written submission to Council are entitled to request to appear before Council or the Delegated Committee of Council to be heard in support of their written submission or be represented by a person specified in their submission.

It is recommended that a consultation meeting with appropriate Council Officers, be arranged to discuss any submissions received relating to the Special Charge.

Following this consultation meeting the normal process for submitters presenting to Council will apply.

It is recommended that persons making a written submission to Council be advised that:

- Submissions will be considered, and any person (or their representative as specified in their submission) who has requested to be heard in support of their submission be heard, by a meeting of Council scheduled for 29 November 2022, or should this meeting not proceed then the next available meeting; and
- Details of their submission (excluding submitter's names and addresses) will be included in a Report to Council at the meeting held when their submissions are considered.

## **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 Henry Street, Yarra Junction offers benefits as it is within the Urban Growth Boundary and would complete an existing sealed road network.

## **RISK ASSESSMENT**

Construction of Henry Street, Yarra Junction 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 road.
- Improved stormwater drainage runoff control directed towards the road from abutting properties, and protection of low side properties from stormwater runoff from the road.
- 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. Special Benefit and Maximum Total Levy;
2. Designated Area;
3. Estimated Cost of Works; and
4. Schedule of Costs per Property.