

## **BELBROOK ROAD, CARWEEN AVENUE, THE HIGHWAY, WELDON GROVE AND MAST GULLY ROAD (SERVICE ROAD), UPWEY 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 23 August 2022 considered a report on road improvement works for Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey. 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 one property's allocated charge has been reviewed 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 Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey Special Charge Scheme in accordance with the provisions of Section 163 of the Local Government Act 189, with the following modifications:***

***(a) Property 23-29 The Avenue be removed from the Special Charge Scheme and Council's contribution to the project be increased by 2 development units to offset the removal.***

***(b) The development unit allocation to property 35 Mast Gully Road be increased from 0.5 to 1 unit.***

***(c) Council's contribution to the project be reduced by 0.5 development units to offset the increased 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 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 that 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.

2. At its meeting on 23 August 2022, Council considered a report regarding the Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey 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 23 August 2022 Ordinary Meeting.

## **DISCUSSION**

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

This Report recommends that Council declare a Special Charge Scheme for the construction of Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey, 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. Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey were included on the endorsed list of roads.

Consultation has occurred with landowners of Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey for the construction of their roads as a Special Charge Scheme.

Council at its meeting of 23 August 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 28 September 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 July 2021 landowners along Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey were surveyed to determine the level of support for a landowner funded Special Charge Scheme to construct their roads. Results were as follows.

- 26 (81%) of landowners responded to the survey.

Of those landowners who responded to the survey:

- 19 (73%) supported the proposed Special Charge Scheme; and
- 7 (27%) opposed the proposed Special Charge Scheme

### ***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 Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey 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***

The charge allocated to property 35 Mast Gully Road, Upwey has been reviewed and increased from 0.5 to 1 development unit. The property gains primary (vehicular) access via Bellbrook Road and the charge of 1 development unit is in accordance with Council Policy. The property owner has been advised in writing of the revised charge and of their opportunity to make a submission to the Special Charge Scheme.

Following detailed design for the project the estimated cost of works has been determined as \$816,269.

Council's contribution to the project is estimated to be \$613,269 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 \$203,000.

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 23 August 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 Implications***

Road construction 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 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***

The proposed works will require the removal of 3 large native trees and 2 exotic trees. These trees would be removed under Council's Code of Environmental Practice guidelines and will result in offset funding being provided for replanting of native vegetation as part of Council's Offset Program. 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 30 August 2022 and also on Council's Internet Website.

The public notice stated that submissions in respect of Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey 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 24 August 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 28 September 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.

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.

### ***Submissions Received***

Two written submissions have been received regarding Council's intention to declare a special charge for the Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey Improvement Works.

The designated area (Attachment 2) of the scheme comprises 31 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.

The submission was made by MNG Lawyers on behalf of the submitters, in consideration of this reports recommendations, it was deemed unnecessary to offer the submitters a consultation meeting.

### **Submission Number 1**

The submission objects on the grounds that the submitter's property does not receive special benefit from the proposed works.

#### **Comment**

On completion of design, in order to limit vegetation removal within The Highway's road reserve, the proposed construction of the road will terminate before the boundary of the submitters property.

As the property will have no abuttal to the proposed works and does not gain primary (vehicular) access via The Highway, it is considered the property will not receive special benefit from the works.

It is recommended the submitters property be removed from the Special Charge Scheme.

## Submission Number 2

The submission objects on the grounds that primary access to the submitter's property is gained from an existing sealed road apron and requests the charge allocated to the property be reduced from 1 development unit to 0.5 development unit.

### Comment

A copy of the submission is included (Attachment 3) in this report.

The property is located on the corner of Mast Gully Road and Belbrook Road. A short sealed intersection apron extends from Mast Gully Road into Belbrook Road and terminates just before driveway access to the property. The apron was previously constructed by Council to improve drainage issues at the intersection.

The remainder of the property's abuttal to Belbrook Road, including driveway access, will be constructed as part of the proposed works. The charge allocated to the property is in accordance Council Policy and is consistent with the charge allocated to neighbouring properties.

The submission also objects on the grounds that the special charge as well as existing Rates and Charges levied on the property will create additional financial stress.

### Comment

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.

To assist landowners with payment of the Special Charge, options are available to pay the Charge over a 10 year period, with the addition of a financing charge.

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 submitters note that, while they may apply for consideration under Council's Rate Recovery and Financial Hardship Policy, they might not qualify.

### Comment

Landowners not assessed to be in a position of financial hardship may still be eligible to make a special payment arrangement to suit their circumstances.

### ***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 Belbrook Road, Carween Avenue, The Highway, Weldon Grove and Mast Gully Road (Service Road), Upwey offers benefits as they are within the urban growth boundary and would complete 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. Submission Number 2