

6.2.5 Special Charge Scheme - Stoney Creek 2

Responsible GM: Peter Benazic
Author: Donna Bird

Recommendation(s)

That Council:

- 1 Acknowledge the majority property owner support as set out in this report to contribute to the construction of Lenne Street, Sutherland Road, and Haupt Place Beaconsfield Upper (as shown in attachment 2), including sealed pavement, kerb & channel and associated drainage and incidental works.
- 2 Approve the assessment of the benefit ratio for the proposed special rate and charge scheme as set out in attachment 3 of this report.
- 3 Adopt the proposed area of the scheme and method of apportionment as set out in attachments 2 and 4 respectively.
- 4 Give notice of intention to declare a special charge scheme in accordance with the proposed declaration set out in attachment 5 to fund the construction of Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper.
- 5 Consider the declaration (attachment 5) at its meeting of 20 February 2023, or such later date as necessary.
- 6 Appoint the Mayor and/or ward Councillor and/ General Manager Infrastructure and Environment as a Council committee with a quorum of one to consider submissions received to Section 223 of the Local Government Act with respect to this scheme.
- 7 Authorise the General Manager Infrastructure and Environment to determine the administrative arrangements to enable submissions to be heard and considered.
- 8 Approve the public notice as set out in attachment 6 to be advertised in the Pakenham-Berwick Gazette and Hills Trader as newspapers that service the area.

Attachments

1. Checklist for Stoney Creek no 2 [6.2.5.1 - 1 page]
2. Maps Stoney Creek No 2 [6.2.5.2 - 2 pages]
3. Calculation of special benefit Stoney Creek 2 [6.2.5.3 - 3 pages]
4. Proposed Special Charge Scheme Declaration Stoney Creek 2 [6.2.5.4 - 2 pages]
5. Special Charge Scheme Public Notice Stoney Creek 2 [6.2.5.5 - 2 pages]
6. CONFIDENTIAL - Apportionment Stoney Creek No 2 Copy [6.2.5.6 - 11 pages]

Executive Summary

This report proposes giving *notice of intention to declare* a special charge to part fund the construction of Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper. This notice begins the formal consultation process at the commencement of the statutory process that enables Council to levy a special charge, (refer attachment 1).

The Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper catchment is included in the Australian Government funded Sealing the Hills program. A recent survey of the property owners in the indicated roads in this catchment indicated 66% property owner support to contributing to a scheme from the responses received. Included property owners will receive special benefit as a result of the works including improved resident amenity, reduction in dust and associated health issues, improved drainage, less wear and tear on vehicles, reduced road maintenance costs and overall improved liveability.

The preliminary estimated cost of the proposed works is \$1,546,200.00 of which \$318,500.00 is proposed to be funded via the proposed special charge contribution received from the included property owners. This will leave an approximate balance of \$1,227,700.00 to be funded from the Australian Government grant.

Property owner contributions have been assessed based on the benefit gained by each existing developed or vacant allotment, capped by Council at \$7,000 per benefit unit, (refer to benefit unit definition below). Council's special rates and charges policy provides for levies to be paid in quarterly instalments that include principle and interest. For the Sealing the Hills program it has been decided that a maximum 7-year payment period be adopted. The financial hardship provisions of this policy provide further relief to those owners demonstrating genuine financial hardship.

Background

The Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper catchment that includes Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper is included for construction in Council's Sealing the Hills program. The properties included are shown on the plan included as attachment 2 to this report.

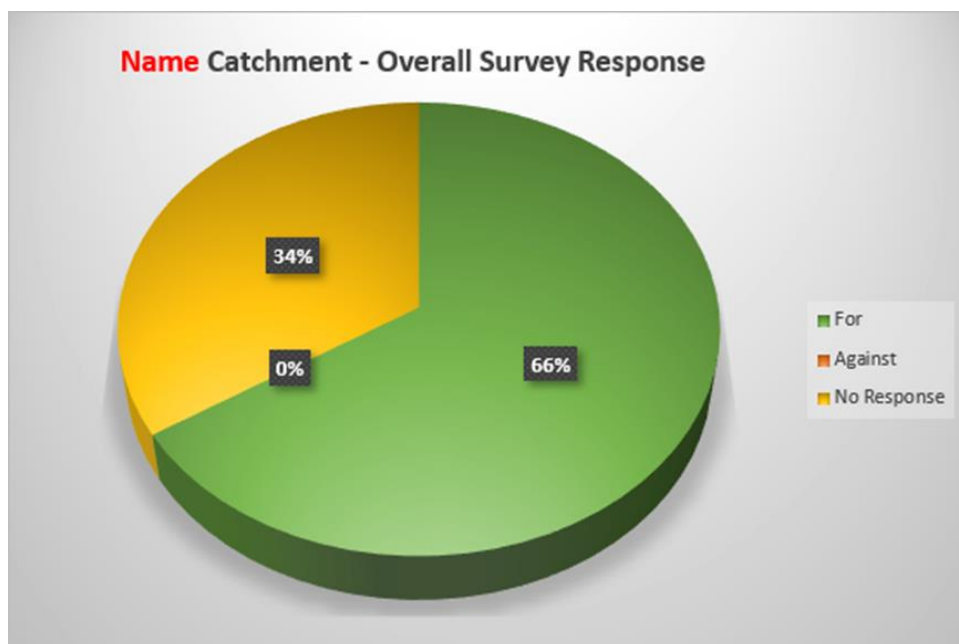
A survey of the property owners within the scheme boundary, (total of 47, was undertaken asking if they were in support of contributing to a special charge scheme at a capped contribution rate of \$7,000 per benefit unit, with a benefit unit being defined as:

- Existing lots, either developed or vacant, that gain, or will gain, primary (vehicular) access from a road being constructed would generally be required to contribute one benefit unit (\$7,000) towards the cost of construction.
- Existing lots, either developed or vacant, with side or rear abuttal to a road being constructed would generally be required to contribute one half benefit unit (\$3,500) towards the cost of construction.
- Existing lots, either developed or vacant, that gain, or will gain, primary access and have side or rear abuttal to roads being constructed would generally be required to contribute one benefit unit (\$7,000) in total
- Existing lots that have the potential to be further subdivided or developed may be allocated a multiple development benefit unit charge.

T. Questionnaire responses

	Number	Percentage
Total no. properties in scheme	47	100%
No. of responses received	31	66%
No. of responses supporting the scheme	31	100%
No. of responses opposing the scheme	0	0%

Support for the scheme was consistent across all roads surveyed. Following consideration of the survey responses a special charge scheme has been prepared to part fund the construction of Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper



Policy Implications

The proposed special charge scheme has been developed in accordance with the provisions of the Local Government Act, Cardinia Councils Special Rate and Charge Policy and the adopted Sealing the Hills program. It is based on community benefit, health, safety, amenity and property owner support.

Section 163 of the Local Government Act provides that Council may not recover a greater portion of the cost of the works than calculated in accordance with the statutory 'benefit ratio' as set out in attachment 3 to this report. Given that Council has capped the property owner contribution at \$7,000 per benefit unit, the proposed scheme is compliant.

Relevance to Council Plan

2.1 We support the creation of liveable spaces and places

2.1.5 Upgrade Council's road network to improve safety and connectivity while considering traffic demand and freight transport needs.

Climate Emergency Consideration

The Sealing the Hills project will consider climate emergency reduction measures such as:

- minimising tree removal through innovative road design
- use of LED lighting to reduce energy emissions
- utilising local contractors and local road & drainage construction materials to minimise travel
- investigating the reuse and use of recycled road construction materials

Consultation/Communication

A letter was sent in June 2022 to the property owners of Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper outlining specifics in relation to their inclusion in the Sealing the Hills program and the associated special charge scheme proposal.

A face to face community consultation was held at Beaconsfield Upper Public Hall on the 29th of June 2022.

In September 2022 a questionnaire was mailed to property owners asking them to indicate their support/opposition to contributing to a special charge scheme at the capped rate of \$7,000 per benefit unit. As outlined above 31 questionnaire responses from 47 properties were received.

Financial and Resource Implications

The scheme funding arrangements are as outlined in Table 2.

T. Preliminary estimated cost of project

Total estimated cost of scheme	\$1,546,200.00
Total Council contribution (approx. 79.4%)	\$1,227,700.00
Benefiting property owner contribution (approx. 20.6%)	\$318,500.00

Note: the estimated project cost includes an allowance of 15% for design, supervision and administration of the scheme.

The Australian Government \$150m grant will be used to fund Council's contribution.

Property owners will be offered the option of paying their contribution in full, or by quarterly instalments over 7-years. Instalment payments will include principle and interest, with interest calculated at the declaration of the scheme based on Council's borrowing rate at the time plus one percent.

Council will require the first payment, either in full or by instalment to be made within 6-months of the practical completion of the works.

Conclusion

It is concluded that the majority of property owners support the construction of Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper and that Council should commence the formal consultation process to initiate a special charge scheme by proceeding to give notice of its intention to declare a special charge to part fund the works.

Sealing the Hills program Special Charge Scheme process checklist

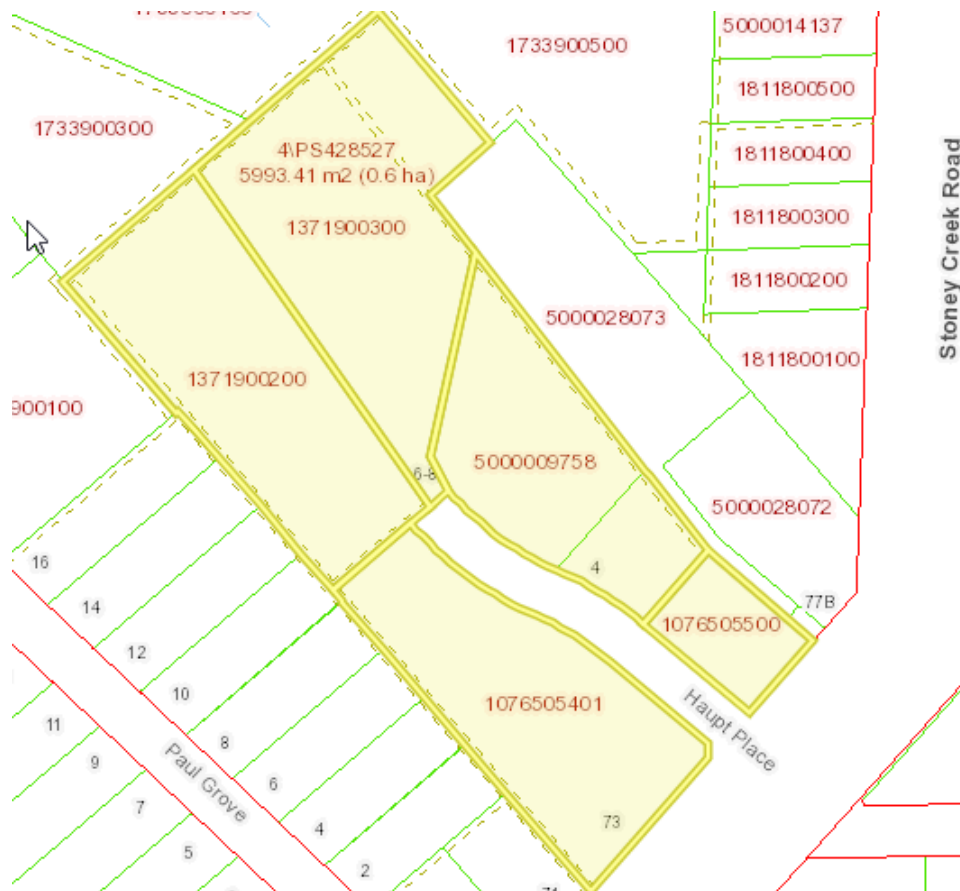
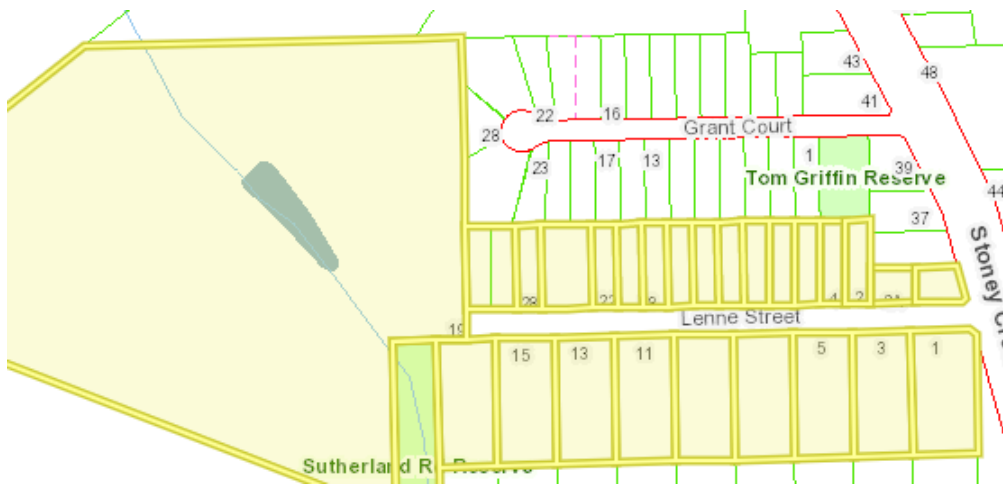


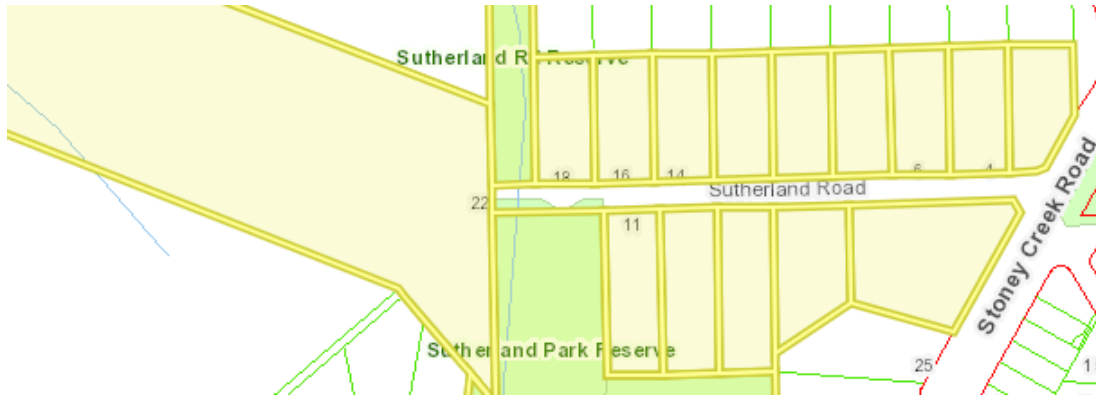
Special charge scheme projects (Section 163 Local Government Act)

Complete	Stage	Description
✓	Survey of landowners	Initial survey of property owners to assist in determining the need, associated issues and level of support for the proposed works and special rate/charge scheme.
✓	Approval to prepare scheme	Decision made to prepare scheme or to shelve project following consideration of the survey of property owners and feedback from the community. <ul style="list-style-type: none"> If the decision is that the scheme should proceed, the engineering design is completed, and a detailed estimate and an apportionment of costs are prepared. If a decision is made that the scheme should not proceed based on resident and community feedback, the affected residents are advised accordingly
✓	Intention to declare scheme	Report to Council providing information on proposed scheme including advice of impending advertising of scheme and declaration of charge. Report seeks Council approval by resolution to proceed with process.
✗	Advertisement and notification	The proposed scheme is advertised in the local newspaper and all affected property owners are notified by mail of proposed works, costs and contributions. This advertisement and notification indicate Council's intention to <i>declare</i> a scheme in a month's time and seeks submissions from affected property owners. Details of the scheme may be inspected at the shire offices.
✗	Submissions	From the time of advertising, property owners have 28 days (as set down by the Act) to lodge submissions, either in support or opposing the proposed scheme.
✗	Submissions review panel hearing	A Submissions Review Panel is convened (may be Council Committee or whole Council) and meets to consider submissions. Some submissions are written only. Submitters may also request to be heard before the committee. The panel makes a recommendation to Council regarding the scheme.
✗	Abandonment of scheme	The panel may recommend to Council that the scheme be abandoned. After considering the panel's report, Council may proceed to abandon the scheme following which property owners are notified and the scheme does not proceed.
✗	Declaration report	Alternatively, the panel may recommend to Council that the scheme proceed. After considering the panel's report, Council may proceed to <i>declare</i> the charges in accordance with its advertised intent. <ul style="list-style-type: none"> After this the Finance Manager issues the levy notices and there is a formal charge placed on the property. Invoices are issued seeking payment of the declared contribution. Payment may be made by instalments or lump sum. The social responsibility provision of Council's Special Charge Scheme Policy provides for those facing financial difficulty This is the final step in the process for Council to make a decision on the scheme
✗	Appeal	Property owners may lodge an application for review of Council's decision with the Victorian Civil and Administrative Tribunal (VCAT) within one month of issue of the levy notice. An appeal is listed, heard and determined by the tribunal and this process generally takes four to six months. Decisions made by VCAT are binding on all parties.
✗	Construction	Council may then proceed to construction. Tenders are invited and a contractor appointed to construct the works. Invoices are issued seeking payment of the declared contribution. Payment may be by instalments or lump sum. The social responsibility provisions of Council's Special Charge Policy provide for those facing financial difficulty.
✗	Final cost report	At the completion of the works the scheme is <i>finalised</i> and a report presented to Council.

STONEY CREEK 2

Lenne Street, Sutherland Road, Haupt Place







Calculation of special benefit and maximum total levy

Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper

In accordance with Section 163(2) of the *Local Government Act 2020* and ministerial guidelines prepared relating to special rates and charges, Council is required to give consideration to the special benefit received from properties external to the proposed special charge as compared to those that will be liable for the special charge.

Landowners involved in the scheme are not to be charged more than their proportional benefit for the proposed works (maximum total levy).

The maximum total levy equates to the product of the benefit ratio (R) and total cost of the works for which the special charge is being established.

Council is required to establish a benefit ratio calculated as follows:

$$\frac{TSB (in)}{TSB (in) + TSB (out) + TCB} = R$$

TSB (in): estimated total special benefit for those properties that Council proposes to include in the scheme.

TSB (out): estimated total special benefit for those properties with an identified special benefit that the Council does not propose to include in the scheme.

TCB: estimated total community benefit.

R ratio benefit.

Properties included in the scheme – TSB (in)

It is proposed to include 47 properties in the scheme resulting in 45.5 benefit units that gain primary access or abut Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper. The criteria considered appropriate for differentiating between the special benefit received by these properties compared to properties not included in the scheme and the broader community are as follows:

- The proposed works will provide continued and safe vehicular access to and from properties gaining primary access from these streets.
- The proposed works will improve the physical and environmental amenity of properties both abutting or gaining access from these streets.
- The proposed works will provide a drainage solution that will assist with street and property drainage issues currently experienced by properties both abutting and gaining access from these streets.

Total scheme benefits (in) is: 45.5

Properties not included in the scheme receiving special benefit – TSB (out)

There are no properties with a special benefit that Council does not propose to include in the scheme.

Total scheme benefit (out) is: 0.

Total community benefit (TCB)

The total community benefit is Council's contribution to the cost of the scheme, which is calculated at 30% of the total number of benefits units in the scheme. It is also proposed to construct drainage infrastructure as part of the overall works that will potentially have a broader community benefit.

Total community benefit (TCB) is 13.65

Maximum total levy

Having regard to *properties not included in the scheme receiving special benefit and community benefits*, it is considered that the 47 property owners within the proposed special charge scheme will receive 70% of the overall benefit as a benefit ratio (R) for the proposed scheme by applying the above factors to the ministerial guideline's formula.

The calculation of the maximum total levy therefore equates to \$1,082,340.00. This is the total cost of the scheme less Council's contribution of 30% (as stated above in the total community benefit)

Having regard to the Council's contribution towards the works, as per the scheme details and Council's intent to only levy the property owners \$318,500.00, compliance with the maximum total levy requirements under Section 163(2A) is satisfied.

Manner of assessment and levy

In relation to special charge scheme considerations the manner of assessment has considered the following criteria:

- All lands within the designated area, described above.
- The existing and potential use of the land.
- The special benefit to each of those lands
- The accessibility of the works for those lands.

The basis of apportionment has been formulated in accordance with Council's Special Rates and Charges Policy on a benefit unit basis as follows:

- Existing lots, either developed or vacant, that gain, or will gain, primary (vehicular) access from a road being constructed would generally be required to contribute one benefit unit.
- Existing lots, either developed or vacant, with side or rear abuttal to a road being constructed would generally be required to contribute one half benefit unit.
- Existing lots, either developed or vacant, that gain, or will gain, primary access and also have side or rear abuttal to roads being constructed would generally be required to contribute one benefit unit.
- Existing lots that have the potential to be further subdivided or developed may be allocated a multiple development benefit unit charge.

Generally, lots will be charged one benefit unit where access is taken directly from Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper. For instances where properties take primary access from an alternative road but have side or rear abuttal to one of the roads to be constructed, these properties would generally be charged one half benefit unit.

Table 1. Properties in scheme NOT allocated 1 benefit unit and reason

Address	Unit allocated	Reason
4 Haupt Place	2 units	Property has potential to be further subdivided
75 Beaconsfield-Emerald Rd	1/2 unit	Property only has rear or side abuttal to a road being constructed
73 Beaconsfield-Emerald Rd	1/2 unit	Property only has rear or side abuttal to a road being constructed
27 Stoney Creek Rd	1/2 unit	Property only has rear or side abuttal to a road being constructed

The basis of the allocated charge to properties has been calculated from:

- a. \$7,000 (fixed) per benefit unit.
- b. In accordance with Sections 167(6)(b) and 172 of the Act, the rate of interest which is payable on instalments is set at the 180 day bank bill rate as published in the Australian Financial Review plus one percent and reviewed every three months, (provided that it will not exceed the rate fixed by the Governor in Council by order of the purposes of Section 172(2A) in which case the rate of interest shall be the maximum rate fixed by the Governor in Council by order for the purposes of this section).

PROPOSED SPECIAL CHARGE SCHEME DECLARATION

Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper

That a special charge in accordance with Section 163 of the Local Government, 1989 (the Act) be declared as follows:

1. A special charge is declared for a period until the works have been completed and the scheme finalised.
2. The special charge be declared for the purposes of defraying any expenses incurred by Council in relation to the construction of Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper including sealed road pavement, kerb & channel and associated drainage and incidental works. Council considers that these works will be of special benefit to those persons required to pay the special charge, (and who are described in succeeding parts of this resolution).
3. The special benefit accruing to those properties to be levied is considered to include improved access, improved amenity and appearance, improved roadside drainage, reduced mud and dust, reduced erosion and lessened nuisance.
4. The following be specified as the area for which the special charge is declared:
 - a. All those properties described in attachment 4 of this report and as highlighted on the plan included as attachment 2.
5. The following be specified as the land in relation to which the special charge is declared:
 - a. All properties described in attachment 4 of this declaration.
6. The following be specified as the criteria which form the basis of the special charge so declared:
 - a. Those properties fronting, abutting or adjacent to the works.
7. The following be specified as the manner in which the special charge so declared will be assessed and levied:
 - a. Existing lots, either developed or vacant, that gain, or will gain, primary (vehicular) access from a road being constructed would generally be required to contribute one benefit unit.
 - b. Existing lots, either developed or vacant, with side or rear abuttal to a road being constructed would generally be required to contribute one half benefit unit.
 - c. Existing lots, either developed or vacant, that gain, or will gain, primary access and also have side or rear abuttal to roads being constructed would generally be required to contribute one benefit unit.
 - d. Existing lots that have the potential to be further subdivided or developed may be allocated a multiple development benefit unit charge.
 - e. The special charge will be levied by sending a notice to the person who is liable to pay, pursuant to Section 163 (4) of the Local Government Act, 1989.
8. The total cost of the works is the amount shown in attachment 4 of this report estimated at \$1,546,200.00.
9. The total amount of the special charge to be levied is the amount shown in attachment 4 of this report estimated at \$ 318,500.00.
10. Having regard to the proceeding parts of this resolution but subject to Sections 166(1) and 167(6) of the Local Government Act, 1989, it is recorded that:
 - a. The owners of the land described in columns A and B of the table in attachment 4 are estimated liable for the respective amounts set out in column F of the table in attachment 4 and;
 - b. Such owners may, subject to any further resolution of Council pay the special charge in the following manner:
 - i. The charge will become due and payable within one month of the issue of the notice requesting payment pursuant to Section 167(3) of the Local Government Act, 1989.
 - ii. The charge may be paid by:
 - Lump sum within one month of the issue of the notice without incurring interest, or
 - Quarterly instalments of principal and interest over a period of up to seven years.

- c. Interest will not be charged for three months after the issue of the notice provided the person liable makes timely payment in accordance with the payment arrangements that may be agreed on by Council.
 - d. In accordance with Sections 167(6)(b) and 172 of the Act, the rate of interest which is payable on instalments is set at the 180 day bank bill rate as published in the Australian Financial Review plus one percent and reviewed every three months, (provided that it will not exceed the rate fixed by the Governor in Council by order of the purposes of Section 172(2A) in which case the rate of interest shall be the maximum rate fixed by the Governor in Council by order for the purposes of this section).
11. There are no incentives for prompt payment, rebates or concessions associated with this special charge.

SPECIAL CHARGE SCHEME PUBLIC NOTICE

Cardinia Shire Council

Notice of intention to levy a special charge scheme to part fund the construction of Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper

Notice is hereby given that Cardinia Shire Council (the Council) intends to consider a resolution at its Monday, 20 February 2023 meeting, (or subsequent Council meeting if necessary), to declare a special charge to partially fund the construction of Lenne Street, Sutherland Road and Haupt Place Beaconsfield Upper. The works will include a sealed road pavement, kerb and channel and associated drainage and incidental works.

The proposed special charge affects properties that are considered to receive a special benefit from the proposed works. Affected property owners are those fronting, abutting or adjacent to the works.

In accordance with Section 163 of the Local Government Act, 1989, a copy of the proposed declaration and details of the proposed scheme, (including plans and apportionments), may be inspected at Council's Civic Centre, 20 Siding Avenue, Officer during office hours for at least 28 days from the date of this notice.

The estimated cost of the works is \$1,546,200.00

The total amount of the special charge proposed to be levied by Council is \$318,500.00

The proposed declaration distributes the charges between property owners based on benefit units, with a fixed charge of \$7,000 per benefit unit.

Payment may be made by lump sum or by quarterly instalments over a period of 7 years. The notice requesting payment is intended to be forwarded within 12 months from the date of declaration and further notice seeking payment within one month after commencement of works.

The scheme will remain in force until all payments have been completed and the scheme finalised.

SUBMISSIONS

A person may make a submission pursuant to Section 163A of the Act and it will be considered in accordance with Section 223 of the Act. A person may also request to be heard in support of their written submission by making that request in writing.

Pursuant to Section 163B of the Act, a person required to pay the special charge levied by the proposed declaration may also object in writing regarding Council making the proposed declaration.

Submissions and objections must be lodged in writing within 28 days of the publication of this notice and be addressed to the General Manager Infrastructure and Environment, Cardinia Shire Council, PO Box 7, Pakenham 3810.

A committee of the Council will be convened to hear submissions. Further advice will be provided on the date of the hearing for those property owners requesting to address this committee in person.

Letters and information regarding the Notice of Intention will be mailed to the owners of the affected properties. If you do not receive this letter within the next few days please contact Special Charge Scheme Officer, Donna Bird on 1300 787624.