

6.1.3 Sealing the Hills - Princess Avenue, Emerald Catchment - Special Charge Scheme Notice of Intention

Responsible GM: Peter Benazic
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Recommendation(s)

That Council:

1. Acknowledge the majority landowner support as set out in this report to contribute to the construction of Princess Avenue and Crichton Road, Emerald, (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 Princess Avenue and Crichton Road, Emerald.
5. Consider the declaration (attachment 5) at its meeting of 19th July, 2021, 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. SCS Process Check list Sealing the Hills Program [XT3S] [6.1.3.1 - 2 pages]
2. SCS included properties plan - Princess Ave Emerald Catchment [6.1.3.2 - 1 page]
3. SCS Benefit Unit Calculation Princess Ave Emerald catchment [6.1.3.3 - 3 pages]
4. SCS Apportionment Sheet - Princess Avenue Emerald catchment [6.1.3.4 - 1 page]
5. SCS declaration Princess Ave Emerald catchment [6.1.3.5 - 2 pages]
6. SCS Public Notice Princess Ave Emerald catchment [6.1.3.6 - 2 pages]

Executive Summary

This report proposes giving 'notice of intention to declare' a special charge to part fund the construction of Princess Avenue and Crichton Road, Emerald. 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 Princess Avenue, Emerald catchment is included in the Australian Government funded "Sealing the Hills" program. A recent survey of the landowners in this catchment indicated approximately 90% landowner support to contributing to a scheme from the responses received. Included landowners 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 \$972,900 of which \$70,000 is proposed to be funded via the proposed special charge contribution received from the included landowners. This will leave an approximate balance of \$902,900 to be funded from the Australian Government grant.

Property owner contributions have been assessed on the basis of 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). Councils 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 seven (7) payment period be adopted. The financial hardship provisions of this policy provides further relief to those owners demonstrating genuine financial hardship.

Background

The Princess Avenue, Emerald catchment, that includes Princess Avenue and Crichton Road is included for construction in Councils 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 12), 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 also 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.

Of the twelve properties surveyed Council received ten, (10), responses, (or 83%). Nine, (90%), of these responses indicated support to contributing to the scheme, while one, (10%), indicated opposition. Following consideration of the survey questionnaire responses a special charge scheme has been prepared to part fund the construction of Princess Avenue and Crichton Road.

Nobelius Heritage Park adjoins a significant portion of the east side of Princess Avenue with access gained at to the park at the east end of Crichton Road. Councils contribution of

approximately 93% of the cost of the works more than covers the contribution requirements from the traffic and usage demands created by the park.

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 landowner 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

3.2 Our Environment - Transport linkages connecting towns

3.2.1 Upgrade Council roads to improve safety while considering the traffic demand of the community.

3.2.2 Continue the use of special charge schemes to finance road, drainage and footpath improvement programs.

Climate Emergency Consideration

The Sealing the Hills project will consider climate emergency reduction issues 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 January of this year to the landowners of Princess Avenue and Crichton Road outlining specifics in relation to their inclusion in the Sealing the Hills program and the associated special charge scheme proposal. A subsequent face to face community consultation session was held at the Emerald Community Hub in early February, from 4.00pm to 7.00pm in the evening, to give owners and residents an opportunity to view plans and comment of the proposal. Disappointingly only two people attended.

In mid February a questionnaire was sent by registered mail to landowners asking them to indicate their support / opposition to contributing to a special charge scheme at the capped rate of \$7,000 per benefit unit. A follow up door knock / reminder letter drop was undertaken to properties who had not responded to the questionnaire by the nominated response date, with the response date extended by one month. As outlined above 10 questionnaire responses from the 12 included properties were received.

Financial and Resource Implications

The scheme funding arrangements are as follows:

PRELIMINARY ESTIMATED COST OF PROJECT	\$972,900
Total Council Contribution (93%)	\$902,900
Benefitting Landowner Contribution (7%)	\$70,000

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

The Australian Government 150 million dollar grant will be used to fund Councils contribution.

Landowners will be offered the option of paying their contribution in full, or by quarterly instalments over seven years. Instalment payments will include principle and interest, with interest calculated at the declaration of the scheme based on Councils borrowing rate at the time plus one percent.

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

Conclusion

It is concluded that the majority of property owners support the construction of the Princess Avenue, Emerald catchment 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 CHECK LIST****SPECIAL CHARGE PROJECTS – (Section 163 – Local Government Act 1989)**

Stage	Description
<i>Survey of Landowners</i>	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.
<i>Approval to prepare scheme</i>	Decision made to prepare scheme or to shelve project following consideration of the survey of property owners and feed back from the community. 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 feed back, the affected residents are advised accordingly
<i>Intention to Declare Scheme</i>	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.
<i>Advertisement and Notification</i>	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 indicates Council's intention to 'declare' 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.
<i>Submissions</i>	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.
<i>Submissions Review Panel Hearing</i>	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.
<i>Abandonment of scheme</i>	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.
<i>Declaration Report</i>	Alternatively the Panel may recommend to Council that the scheme proceed. After considering the Panel's report, Council may proceed to "declare" the charges in accordance with its advertised intent. Subsequent to this the Finance Manager issues the levy notices and there is a formal charge placed on the property. This is the final step in the process for Council to make a decision on the scheme.
<i>Appeal</i>	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.
	<i>Construction</i>	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 provides for those facing financial difficulty.
	<i>Final Cost Report</i>	At the completion of the works the scheme is "finalised" and a report presented to Council.



PRINCESS AVENUE AND CRICHTON ROAD, EMERALD

Calculation of Special Benefit and Maximum Total Levy

In accordance with Section 163(2) of the Local Government Act 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:

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

- TSB (in) – is the estimated total special benefit for those properties that Council proposes to include in the scheme.
- TSB (out) – is the estimated total special benefit for those properties with an identified special benefit that the Council does not propose to include in the scheme.
- TCB – is the estimated total community benefit.
- R – is the ratio benefit.

Properties included in the scheme – TSB (in)

It is proposed to include 12 properties in the scheme resulting in 10.0 benefit units that gain primary access or abut Princess Avenue and Crichton Road, Emerald. 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.

TSB (in) is therefore calculated as having a result of 10.0.

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.

TSB (out) is therefore calculated as having a result of 0.

Community benefits – TCB

As Princess Avenue and Crichton Road do not act as collector roads, the traffic generation and parking requirements of the Nobelius Heritage Park are attributed to the needs of the broader community.

TCB is therefore calculated as having a result of 5.0

Maximum total levy

Having regard to “properties not included in the scheme receiving special benefit” and “community benefits”, it is considered that the 12 landowners within the proposed special charge scheme will receive 50 percent of the overall benefit as a benefit ratio (R) for the proposed scheme by applying the above factors to the Ministerial Guidelines formula.

The calculation of the maximum total levy therefore equates to \$486,450, (cost of scheme works less 50% for frontage, traffic and parking demands associated with the Nobelius Heritage Park.

Having regard to the Council’s contribution towards the works, as per the scheme details and Councils intent to only levy the property owners \$70,000, 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 taken into account 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 Princess Avenue or Crichton Road. 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.

With regard to individual properties within the scheme:

- 8 Emerald Lake Road – property levied 0.5 benefit unit as primary access taken from Emerald Lake Road with side boundary to Princess Avenue.
- 10 Emerald Lake Road – property levied 0.5 benefit unit as primary access taken from Emerald Lake Road with side boundary to Princess Avenue.

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).

Major Roads Program - Special Charge Scheme (SCS) Apportionment Sheet (Template)

Road - **Princess Ave/Crichton Rd, Catchment**

Project Cost Summary:	
Total Project Cost (Inc. Design, Supervision/Admin & Offset)	972,900
Total Council Contribution	902,900
Total Landowner Contribution	\$ 70,000.00
Financing Costs	\$6,125

Council Cost Summary:	
Council 50% Contribution	\$486,450
Subsidy for costs above FedFund ceiling	\$ 416,450.00
Total Council Cost	\$ 902,900.00

Apportionment Summary:	
Unit Ratio =	100%
Total Landowner Units =	10
Total Council Units =	Nil
\$ / Unit =	\$48,645
FedFund Ceiling \$/ Unit =	\$7,000

DESCRIPTION	PROPERTY ADDRESS	ASSESSMENT NO.	DEVELOPMENT / BENEFIT UNIT	CHARGE FOR THE WORKS	ADJUSTED FOR CEILING	FINANCING CHARGE	TOTAL CHARGE	YEARLY CHARGE
L13 LP24462 V8856 F926	1 Crichton Rd	2204300100	1	\$ 48,645.00	\$ 7,000.00	\$ 612.50	\$ 7,612.50	\$ 1,087.50
L14 LP24462	3 Crichton Rd	2204300200	1	\$ 48,645.00	\$ 7,000.00	\$ 612.50	\$ 7,612.50	\$ 1,087.50
PT CP159745	5 Crichton Rd (Nobelius Heritage Park)	2204350100	Nil					
L20 LP24462 V7910 F048	2 Princess Ave	2702000100	1	\$ 48,645.00	\$ 7,000.00	\$ 612.50	\$ 7,612.50	\$ 1,087.50
L19 LP24462	4 Princess Ave	2702000200	1	\$ 48,645.00	\$ 7,000.00	\$ 612.50	\$ 7,612.50	\$ 1,087.50
L18 LP24462 V7981 F035	6 Princess Ave	2702000300	1	\$ 48,645.00	\$ 7,000.00	\$ 612.50	\$ 7,612.50	\$ 1,087.50
L17 LP24462 V8140 F826	8 Princess Ave	2702000400	1	\$ 48,645.00	\$ 7,000.00	\$ 612.50	\$ 7,612.50	\$ 1,087.50
L16 LP24462	10 Princess Ave	2702000500	1	\$ 48,645.00	\$ 7,000.00	\$ 612.50	\$ 7,612.50	\$ 1,087.50
L1 TP146483 V9080 F433	12 Princess Ave	2702000600	1	\$ 48,645.00	\$ 7,000.00	\$ 612.50	\$ 7,612.50	\$ 1,087.50
L4 LP24462	8 Emerald Lake Rd	2270050400	0.5	\$ 24,322.50	\$ 3,500.00	\$ 306.25	\$ 3,806.25	\$ 543.75
L1 TP184743 V9114 F697	10 Emerald Lake Rd	2270050500	0.5	\$ 24,322.50	\$ 3,500.00	\$ 306.25	\$ 3,806.25	\$ 543.75
L1 TP108531	13 Beaconsfield-Emerald Rd	2076560500	1	\$ 48,645.00	\$ 7,000.00	\$ 612.50	\$ 7,612.50	\$ 1,087.50
Total			10	\$ 486,450.00	\$ 70,000.00	\$ 6,125.00	\$ 76,125.00	\$ 10,875.00

Notes

50 % Council contribution required for Nobelius Heritage Park
 Total project cost includes 15% design/supervision/admin allowance
 Financing charge estimated on 5% interest paid in quarterly installments over a 7 year repayment period

PROPOSED SPECIAL CHARGE SCHEME DECLARATION**PRINCESS AVENUE AND CRICHTON ROAD, EMERALD**

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

- a) A special charge is declared for a period until the works have been completed and the scheme finalised.
- b) The special charge be declared for the purposes of defraying any expenses incurred by Council in relation to the construction of Princess Avenue and Crichton Road, Emerald 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).
- c) 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.
- d) The following be specified as the area for which the special charge is declared:
 - All those properties described in attachment 4 of this report and as highlighted on the plan included as attachment 2.
- e) The following be specified as the land in relation to which the special charge is declared:
 - All properties described in attachment 4 of this declaration.
- f) The following be specified as the criteria which form the basis of the special charge so declared:
 - Those properties fronting, abutting or adjacent to the works.
- g) The following be specified as the manner in which the special charge so declared will be assessed and levied:
 - 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.
 - 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.
- h) The total cost of the works is the amount shown in attachment 4 of this report estimated at \$972,900.
- i) The total amount of the special charge to be levied is the amount shown in attachment 4 of this report estimated at \$70,000.
- j) 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:
 - i) 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;
 - ii) Such owners may, subject to any further resolution of Council pay the special charge in the following manner:

- a. 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.
 - b. 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).
- k) 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 to Part Fund the Construction of Princess Avenue and Crichton Road, Emerald**

Notice is hereby given that Cardinia Shire Council (the Council) intends to consider a resolution to declare a special charge at its 19 July 2021 meeting, (or subsequent Council meeting if necessary), for the purposes of defraying any expenses incurred by Council in relation to the construction of Princess Avenue and Crichton Road, Emerald including sealed road pavement, kerb & channel and associated drainage and incidental works.

The proposed special charge affects those properties it considers receive a special benefit. 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 together with the details of the proposed scheme including plans and apportionments may be inspected at the Cardinia Shire Offices, 20 Siding Avenue, Officer during office hours for at least 28 days after the date of this notice.

The estimated cost of the works is \$972,900.

The total amount of the special charge proposed to be levied by Council is \$70,000.

The proposed declaration distributes the charges between property owners based on benefit units.

Payment may be made by lump sum or by quarterly instalments over a period of seven years. The notice requesting payment is intended to be forwarded six months after the works reach the stage of practical completion.

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

TAKE NOTICE:

That 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.

A person required to pay the special charge levied by the proposed declaration may also object pursuant to Section 163B of the Act concerning Council making the proposed declaration by lodging a written objection.

Submissions and objections are to be made to the Council and must be lodged in writing within 28 days of the publication of this notice with the General Manager Infrastructure & Environment, Cardinia Shire Council at 20 Siding Avenue, Officer or by post to 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 relating to the Notice of Intention will be mailed to the owners of the affected properties. You should contact Mr Ken White, Special Charge Scheme Officer, Cardinia Shire Council on 59454222 if you do not receive this letter within the next few days.