

## **6.2.3 Abandonment of Special Charge Scheme - Northern End of Burton Road, Beaconsfield Upper**

**Responsible GM:** Peter Benazic  
**Author:** Nicole Alvares

### **Recommendation(s)**

That Council abandons the special charge scheme due to inadequate support from the proposed beneficiaries during the questionnaire survey phase as set out under Section 163B of the Local Government Act 1989 and ceases the associated planning for the proposed construction works on the private carriageway easement at 37, 41 Burton Road and 103 Beaconsfield-Emerald Road, Beaconsfield Upper.

### **Attachments**

1. Scheme Process Chart [6.2.3.1 - 1 page]
2. Plan of Scheme Area [6.2.3.2 - 1 page]
3. Benefit Ratio Calculation [6.2.3.3 - 2 pages]

### **Executive Summary**

This report proposes that Council abandons a special charge scheme to fund portion of the cost in constructing the carriageway easement at the northern end of Burton Road, Beaconsfield Upper. This notice terminates the formal consultation process at the commencement of the statutory process that enables Council to levy a special charge, (refer attachment 1).

A recent survey of the landowners in the specified section of Burton Road, Beaconsfield Upper indicated 67% were not in support to contributing to the new scheme from the responses received.

Included landowners would have received 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.

### **Background**

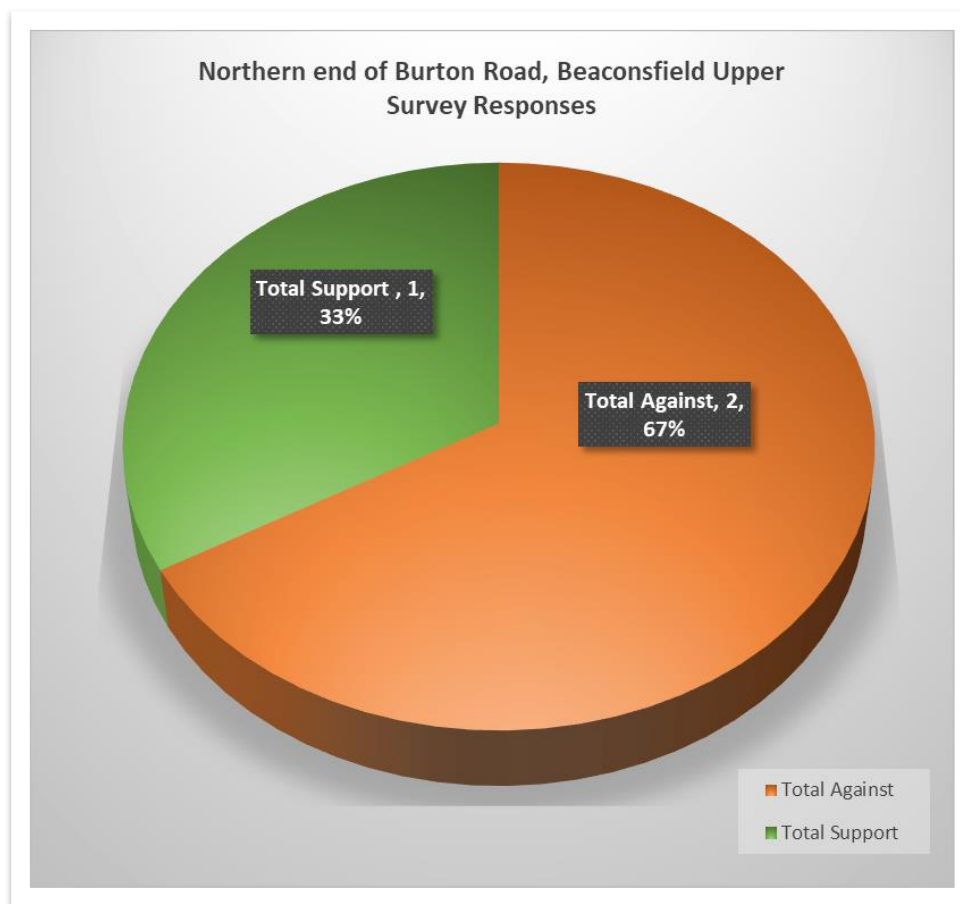
The carriageway easement at the northern end of Burton Road, Beaconsfield Upper that includes 37, 41 Burton Road and 103 Beaconsfield-Emerald Road, Beaconsfield Upper was initially included in the Stoney Creek catchment, Beaconsfield Upper as part of the Australian Government funded Sealing the Hills program. Being that Council is not the beneficiary of the carriageway easement, the properties involved were removed from the original scheme following the submissions hearing on 1<sup>st</sup> February 2022 and Council resolved to proceed with the proposed special charge scheme for Stoney Creek catchment at its meeting on 21<sup>st</sup> March 2022. The properties involved are shown on the plan as attachment 2 to this report.

Upon additional requests and further assessment of the scheme area, a new scheme was initiated to assess the level of support to proceed with the formal statutory special charge scheme process. A survey of the property owners, (total of 3), was undertaken, for the second time, 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.

**Table 1. Questionnaire responses**

	Number	Percentage
Total no. properties in scheme	3	100%
No. of responses received	3	100%
No. of responses supporting the scheme	1	33%
No. of responses opposing the scheme	2	67%



Above statistics reflect the number and percentage of the survey responses received from all 3 property owners indicating insufficient support to the scheme.

Following consideration of the survey responses, Council resolves to abandon the special charge scheme legislative process as outlined in Section 163 of the *Local Government Act 1989* and affected property owners to be notified.

### 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 along with a formal questionnaire was sent at the end of May 2022 to all 3 property owners outlining specifics in relation to their inclusion, once again, in the Sealing the Hills program and the associated special charge scheme proposal as well as asking them to indicate their support or opposition to contributing to a special charge scheme at the capped rate of \$7,000 per benefit unit.

Verbal and written consultation was undertaken with the affected property owners, indicating interest to reassess the proposed scheme, whereby, the new scheme was determined. As outlined above, all 3 questionnaire responses from 3 properties were received.

### Financial and Resource Implications

The scheme funding arrangements as outlined in Table 2 are based on the original scheme specified in notice of decision of Stoney Creek catchment report at its meeting in December 2021 that included the 3 properties. The allocated benefit unit and reason are as specified in Table 3.

**Table 2. Preliminary estimated cost of project**

Total estimated cost of scheme	\$2,235,600
Total Council contribution (approx. 83%)	\$1,854,100

Benefiting property owner contribution (approx. 17%)	\$381,500
--	-----------

Table 3. 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.

**Table 4. Properties in scheme allocated benefit unit and reason**

Property Address	Benefit Unit	Reason
37 Burton Road, Beaconsfield Upper VIC 3808	1	Driveway access on to Burton Road
41 Burton Road, Beaconsfield Upper VIC 3808	1	Driveway access on to Burton Road
103 Beaconsfield-Emerald Road, Beaconsfield Upper VIC 3808	0.5	Primary access to Beaconsfield-Emerald Road with rear boundary and secondary access to Burton Road

Property owners were 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 would have required the first payment, either in full or by instalment to be made within a 12 months of declaration date and after one month of the commencement of the works.

Property owner contributions were 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 calculation in attachment 3 of this report). 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 7-year payment period be adopted. The financial hardship provisions of this policy provide further relief to those owners demonstrating genuine financial hardship.

## Conclusion

It is concluded that due to the insufficient support from proposed beneficiaries, the formal legislative process for a Special Charge is unable to proceed to prepare a design plan for the carriageway easement at the northern end of Burton Road, Beaconsfield Upper.

In accordance with 2020 Review of Special Rate and Charge Scheme Policy, where a special rate or charge scheme does not proceed due to inadequate support from proposed beneficiaries during the development phase pursuant Section 163B of the Local Government Act, the project will not be re-investigated within three years from its date of abandonment.

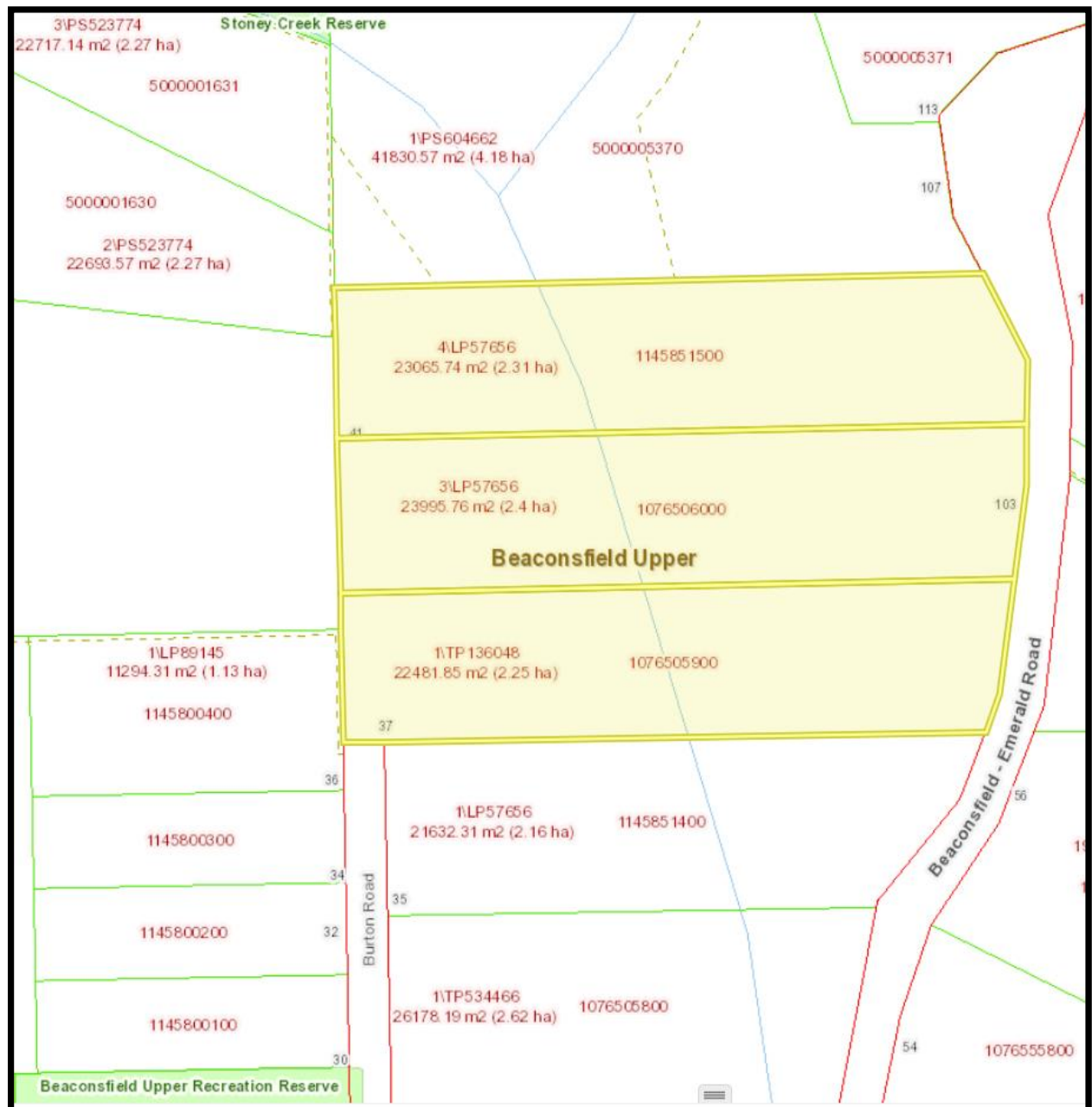
## Sealing the Hills program Special Charge Scheme process checklist



### 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 / abandon 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"> <li>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.</li> <li>If a decision is made that the scheme should not proceed based on resident and community feedback, the affected residents are advised accordingly.</li> </ul>
✗	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"> <li>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 by instalments or lump sum. The social responsibility provisions of Council's Special Charge Policy provide for those facing financial difficulty.</li> <li>This is the final step in the process for Council to make a decision on the scheme.</li> </ul>
✗	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.
✗	Final cost report	At the completion of the works the scheme is <i>finalised</i> and a report presented to Council.

## CARRIAGEWAY EASEMENT OF BURTON ROAD, BEACONFIELD UPPER – PROPERTIES INCLUDED

**BURTON ROAD, BEACONSFIELD UPPER 3808**



## Calculation of special benefit and maximum total levy

### Burton Road, 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 3 properties in the scheme resulting in 2.5 benefit units that gain primary access or abut Burton Road, 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: 2.5

### **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. The traffic demands are attributed to the

needs of the broader community. 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: 0.75

### **Maximum total levy**

Having regard to *properties not included in the scheme receiving special benefit and community benefits*, it is considered that the 3 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 \$1,564,920 as described in notice of decision report for Stoney Creek catchment presented to Council at its meeting in December 2021. 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 \$17,500, 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 Burton Road, 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.

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).