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**E.5 Cape Paterson Area Special Charge Scheme No. 27**

**File No:** CMI4/448  
**Department:** Infrastructure  
**Council Plan Strategic Objective:** Sustainable Development & Growth

Our built environment complements  
our landscape, lifestyle and climate.

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**Previous Items:** CBR6/13 - Cape Paterson Area Special Charge Scheme No 27  
(1.15pm - 2.00pm) - Policy Workshop - 5 June 2013  
SR5/13 - Cape Paterson Area Special Charge Scheme No 27 -  
Notice of Intention to Declare - Council - 17 July 2013  
CBR2/13 - Proposed Cape Paterson Area Special Charge  
Scheme (1.00pm - 1.45pm) - Policy Workshop - 2 October  
2013  
SR2/14 - Cape Paterson Area Proposed Special Charge Scheme  
No. 27 - Notice of Intention to Declare - Council - 19 February  
2014

**Declaration**

The author has no direct or indirect interests in relation to this report.

**Summary**

At its meeting on 19 February 2014, in accordance with Section 163 of the Local Government Act, Council resolved to advertise its intention to declare a special charge for the purpose of financing the construction of the remaining unconstructed roads and drainage in the Cape Paterson Area. Council proposed to make the declaration at its meeting on 16 July 2014.

This signified the start of the formal special charge scheme process. This process formally enables Council to ascertain the level of support through the written objections and/or submissions, in accordance with the legislated requirements of the Act.

The Cape Paterson Area road and drainage improvements proposal was consistent with Council policies and the road and drainage standards that apply for all urban residential areas including Council upgrade projects and new residential subdivisions. The project would have provided for a significant improvement to infrastructure in the area and the works will remain necessary.

Of the 470 properties included in the scheme, a total of 301 objections had been received with 94 also providing a written submission.

Of the 470 properties only three (3) property owners indicated on their submissions that they wished to be heard.

A further fourteen (14) objections, five (5) submissions against the proposal and two (2) submissions in favour of the proposal were from members of the community that were not included in the scheme.

Due to the level of objection to the proposed infrastructure improvements, it was deemed unnecessary for the Committee of Council to meet to consider submissions and to make a formal recommendation to the full Council.

Accordingly a copy of all submissions/objections received has been attached to this report for review of Council.

As there was a level of objection from the affected property owners to the proposed special charge scheme in excess of 50% the scheme cannot be declared.

Based on the level of objection Council must abandon the special charge scheme or they would be in breach of Section 163B(6) of the Act.

## **Introduction**

Bass Coast Shire has a legacy of urban areas with no drainage, unsealed roads and no paths. The estimated cost of bringing these estates and urban roads to a basic level of infrastructure is estimated to be over \$150 million.

Council has a priority list which prioritises all of the areas across the Shire, that have unconstructed streets and inadequate drainage, with a view to upgrading these areas. The mechanism that Council has adopted to fund these upgrade projects is through the special charge provisions in the Act. This ensures equity for all ratepayers across the Shire by relying on a "user pays" system for the upgrade of local streets whereby those that gain the benefit from the works contribute to the costs of the works.

Cape Paterson Area had moved to the top of the priority list for infrastructure upgrades to be undertaken within the Shire.

Council commenced the statutory procedures relating to the scheme by advertising its intention to declare the proposed scheme. Notices were sent to all affected landowners. A public notice was placed in the South Gippsland Sentinel Times on 25 February 2014. The notice advised of Council's intention to declare a scheme and invited submissions in relation to the proposal. A copy of this public notice was provided to all landowners.

The submission period commenced on 25 February 2014 and closed at 5pm 26 March 2014.

A total of valid 301 objections were received. Of these, 94 included additional written submissions.

Refer to Attachment 1 for further information in relation to the objections received.

Refer to Attachment 2 for further information in relation to the submissions received.

## ***Scheme Cost Estimates***

The cost estimates were determined by up to date contract rates and associated estimated service authority charges (ie water and sewer, gas, telstra and power relocation works). In addition, a design, supervision and administration amount of 12% and CPI of 4% had been estimated based on the overall total project construction costs. The total cost of all works in the scheme was \$6,176,242.76 excluding GST.

### **Maximum Total Levy Amount**

The Act was amended in 2003 and ministerial guidelines in relation to Special Charge Schemes were introduced in 2004. The Act and the prescribed ministerial guidelines set out the basis for administering the scheme and determining the distribution of cost.

Council has to determine the maximum amount that landowners included within the scheme must contribute, known as the maximum total levy. The legislation and guidelines require Council to determine the following:

- identify any properties within the scheme boundary that will not be included in the scheme but will receive a benefit. This requirement primarily relates to non-rateable properties such as Crown Land. The guidelines indicate that Council should contribute financially for these properties

*Properties considered under this were:*

- *Park in Park Parade Road*
- *Reserve at the corner of Cassia Street and Surf Beach Road*
- *Crown land at the north of Cassia Street*
- the level of community benefit that Council is required to contribute to the scheme based on the level of benefit to the greater community

*Future residential developments at the western and northern extent of the scheme boundary which may potentially use the streets within the scheme to access the local tavern and the beach.*

*Other properties not included in the scheme may potentially also use the streets within the scheme once they are constructed.*

*Both of these circumstances were considered in determining the level of benefit to the greater community.*

The benefit ratio (R) is the estimated proportion of the total scheme cost that the owners involved in the scheme can contribute. The balance is to be paid by Council on behalf of the whole community.

For this project, the property ratio has been determined to be 90.76% and therefore the community benefit has been determined to be 9.24%. Accordingly the maximum total levy amount is \$5,605,557.93.

Further explanation of the calculation of the maximum levy amount was available in the Notice of Intention to declare report presented to Council at its 19 February 2014 meeting.

### **Strategic Basis**

The Council Plan 2013-2017 contains a number of principles and key strategic objectives.

The relevant principles, which are to guide all decisions and actions are:

- The social, environmental and economic priorities of the Shire benefit both current and future generations
- Equity in the distribution of resources across the Shire

- Transparent evidence-based and inclusive decision making
- The provision and use of energy and resources will be promoted in an efficient and sustainable way

The key strategic objective titled *Sustainable Development and Growth* relates to the built environment complementing our landscape, lifestyle and climate.

The strategy that underpins this objective is:

*“providing infrastructure and facilities that are well managed, environmentally sustainable and are suitable for the community’s needs.”*

Implementing this project would assist Council in achieving this objective and strategy as the upgrade of roads and drainage would have improved the infrastructure in the Cape Paterson Area to ensure that it would be suitable for the community’s current and future needs.

The objective titled *Effective Governance* relates to Council demonstrating leadership to achieve good governance, community engagement and excellence in service delivery.

The strategies that underpins this objective are:

- *“ensuring fair and equitable decision making processes are in place and well communicated”*
- *“manage our financial resources, assets and risks to deliver the best possible outcomes for our community”*

Funding this project through the special charge scheme provisions of the Act assists Council to achieve this objective and strategies, as a special charge scheme relies on ‘user pays’ principles. This ensures that those that benefited from the works are those required to contribute to the costs of the works, thus ensuring that general rates are kept affordable for all ratepayers across the Shire.

The Council Policy which provided the policy direction for this road and drainage upgrade within the Cape Paterson Area is Council’s Urban Streets Improvement Policy. This policy states that:

- *Council is committed to upgrade and maintain all the urban streets to a sealed status*
- *Council is committed to providing drainage to all unserviced urban subdivisions in the Shire*

The implementation of this project would have improved road and drainage infrastructure within the Cape Paterson Area and also demonstrated Council’s commitment to improving infrastructure for the Cape Paterson community.

The Local Government Act 1989 articulates the primary objectives of a Council. Section 3C(f) states that Council must have regard to the equitable imposition of rates and charges. In the past Council has used a special charge on those that receive a benefit from infrastructure upgrades to ensure an equitable imposition of rates and charges across the municipality.

## Finances

A reconciliation of costs expended to date attributable to the scheme, has been undertaken and these costs are approximately \$259,000 of capital funding to develop the project. The basis of this funding commitment was that the costs would be reimbursed through the proposed special charge scheme.

The feature survey and geotechnical investigation report is data that could be used in the future for other projects that may be undertaken in the scheme area.

The total estimated cost of the scheme was \$6,176,242.76. The amount to be recovered from landowners was \$5,605,557.93.

The community benefit proportion, or the amount to be contributed toward the scheme works by Council based on the legislation and ministerial guidelines, was determined as 9.24%. This equates to \$570,684.83.

A further \$937,788 was required from Council to fund the costs that could not be included as part of the scheme. These costs included:

- modifying the existing underground drainage system that was installed as part of a past scheme
- providing a footpath from the existing footpath in Nardoo Street to the Park Parade Reserve
- including Water Sensitive Urban Design in some parts of the project

Council's contribution towards the entire project was estimated to be \$1,508,473.

The estimated costs were derived based on the concept design and the engineers estimate.

## Stakeholders

The stakeholders were identified as part of the process for a Special Charge Scheme. They included the affected landowners that will receive a direct benefit from the proposed works and the ratepayers of Bass Coast Shire.

There are 470 properties included in the proposed scheme and all of these properties were identified as likely to receive a direct benefit from the proposed works. These were made up from 469 residential properties and one (1) property owned by a public authority.

The proposed works have been presented to the affected landowners.

All property owners were advised that they had the opportunity to make a written submission and/or objection to the proposed scheme.

## Statutory Requirements/Codes/Standards/Policies

Currently Council has an ongoing program for the construction of unconstructed streets and drains within urban areas of the Shire. Section 163 of the Local Government Act enables Council to declare a Special Charge Scheme and recoup the costs from persons considered to benefit from the works.

The statutory procedures under Section 163 of the Local Government Act for declaring and levying a special charge are summarised as follows:

Procedural Step	Status	Proposed Date
Community Information Sessions held. Provided outline of proposed works to affected landowners	Completed	
Council resolve its intention to declare a Special Charge Scheme at its 19 February Council meeting, giving at least 28 days prior notice to declaring a scheme.	Completed	
Advertise and place a copy of the proposed declaration on display for at least 28 days after the publication of the notice.	Completed	
Committee of Council to review all submissions in relation to Council's intention to declare the Special Charge Scheme.	No longer required.	
Council to decide to proceed with, vary or abandon the levying of the Special Charge Scheme.	Purpose of this report	21 May 2014
Owners advised of Council's intention to abandon the proposed scheme.	Completed. Letter sent advising property owners of outcome of submission process 7 April 2014	April 2014

Section 163A of the Act outlines the submission process. This section of the act states:

*A person may make a submission under section 223 in relation to a Council's proposal to make a declaration under section 163.*

Under Section 223 of the Act any person is eligible to make a submission regarding the proposed special charge. Those landowners included within the scheme have been advised that they can make a written submission and they can request to speak to their submission and have it heard by a Committee of Council, should they wish to do so.

A submission made under Section 163A of the Act can also be an objection to the proposed declaration. Section 163B of the Act outlines the objection process. This process considers the level of written objections that are received in relation to the proposed special charge.

Council must consider the number of objections if the maximum total levy or the total amount to be recovered from landowners, exceeds two thirds of the total costs of the scheme. Section 163B(6) of the Act states:

*A Council cannot make a declaration if the Council receives objections from persons who will be required to pay the special rate or special charge in respect of a majority of the rateable properties in respect of which the special rate or special charge would be imposed.*

This means that in accordance with Section 163B of the Act, if a majority of property owners who are included within the proposed scheme and are required to pay a special charge, provide a written objection as part of the submission process, Council must abandon the scheme as per the proposed declaration.

A Committee of Council was nominated to consider and hear these submissions. The committee was to consist of the Mayor Cr Neil Rankine, Cr Clare Le Serve and Cr Kimberley Brown.

During the submission process Council received the following:

<b>From property owners within the scheme</b>	
Total Submissions received	315
Total objections	301
Total Submissions For	14
<b>Total % of objections</b>	<b>64%</b>
Total requests to be heard in support of their submission	3
Total late objections	8
<b>Not scheme members **</b>	
Total submissions received	21
Total objections	19
Total submissions for	2

\*\* These objections cannot be included in the total number of objections as they are not from property owners liable to pay the special charge (as per the Local Government Act)

In accordance with Section 163B(6)

*“A Council cannot make a declaration if the Council receives objections from persons who will be required to pay the special rate or special charge in respect of a majority of the rateable properties in respect of which the special rate or special charge would be imposed. “*

Therefore due to the level of objection received the scheme must be abandoned by Council through formal resolution. A declaration of the scheme would be a breach of Section 163B(6) of the Act.

## Other Options

### Modify the Scheme

The construction standard adopted for this project was consistent with other urban areas within the Shire and consistent with Council's Urban Streets Improvement Policy.

As the majority of property owners objected to the scheme then the scheme in its current form must be abandoned.

Council can however put forward an alternative scheme. There were no suggestions for alternatives put forward as part of the submission process, so it would be unclear whether sufficient support would be obtained for any alternative option.

If an alternative option was to be considered, further works would be required by Council officers to determine the long term viability of the option.

Any modified project, funded via a special charge scheme, would also require restarting the legislative process.

### Utilising Council's contribution to undertake further works

Under the proposed scheme Council was making a contribution of costs based on the benefit that would be received by those not included within the scheme ie the greater community (outside of the Scheme Area). There were also works required to be undertaken as part of the project that could not be charged to the property owners, as property owners had already contributed towards the costs of such works in a previous scheme, namely underground drainage and these costs were subsequently removed from the scheme.

Council's contribution to the project is summarised as follows:

Modifications to existing drainage to suit the new road alignment	\$685,607.00
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*These drainage modifications do not need to be done if there is no new road to match into.*

Concrete footpath along Anchor Parade	\$ 75,236.00
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*The concrete footpath cannot be provided without the installation of the kerb and channel to enable the large open drain to be removed as it would not fit on the existing nature strip.*

Water Sensitive Urban Design	\$176,995.00
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*The Water Sensitive Design works require the direction of the storm water into the proposed system. Without the sealed road pavement and the kerb and channel, the system would fail to function currently due to the build up of silts and gravels from the unsealed roads and would require a higher level of maintenance and higher life cycle costs.*

Community benefit Contribution as part of the scheme	\$570,684.83
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*As the works are not proceeding, then there will be no community benefit provided. Most people living adjacent to this area will likely continue to use the sealed roads that already exist to gain access to the beach or shops rather than use the unconstructed roads within the scheme boundary.*

Therefore it is not appropriate to consider allocating these funds to do other works within the scheme area.



### Increase Council Contribution

Council can choose to increase its level of contribution to the scheme. Section 163B, if Council contributes greater than 1/3 of the total scheme costs then the property owner's right of objection does not apply. This means that Council can choose to proceed with a project even if the majority of property owners are against the proposal.

In adopting this option, it sets a precedent that other communities within the Shire would expect Council to do the same for any future schemes in their townships/streets. It also doesn't recognise the significant number of schemes Council has successfully implemented in the past where the Council's Contribution is based on the determination of the true level of benefit to the greater community.

Given the level of objection was over 50% then this alternative would still be seen as an unfavourable outcome.

For this project Council would need to contribute \$1.5 million plus the \$938,000 for works outside of the scheme. There is currently no allocation for this level of Council contribution within Council's Strategic Resource Plan and therefore would impact Council's ability to deliver other priorities within the roads improvement program, namely Sunset Strip and Pioneer Bay.

This would also not be considered equitable for others who would have already paid for infrastructure through contribution to upgrade projects or through the purchase of land that has had these development costs built in.

### Fully Fund the Project through General Rate Revenue

Government at all levels are faced with the dilemma of how to ensure our communities remain liveable, in the face of growing populations, yet how infrastructure necessary to support the liveability of our places is funded. Council essentially has two alternatives; fund these types of urban road and drainage upgrade projects through rate revenue whereby the whole of the community funds the upgrades or fund them through a user pays system such as a special rate or charge.

If Council was to decide that these types of projects would no longer be funded through a special charge placed on those properties that gain the benefit from the works, but rather be fully funded through general rate revenue, it would result in a rate rise of up to 25% on every ratepayer across the Shire.

The majority of property owners within the urban areas of the Shire already have road and drainage infrastructure. This was previously paid for by the property owner (or previous property owners) either through a past special charge scheme or in the property price for land in a new subdivision or development.

As such it is considered unfair and inequitable to impose a significant general rate increase of up to 25% on those that have already paid for sufficient road and drainage infrastructure within their own street, to fund infrastructure that primarily benefits those that have not paid for sufficient infrastructure.

Therefore it continues to be more economically sustainable to consider the use of the special charge funding mechanism to assist in delivering the volume of infrastructure improvements required to satisfy Council's commitment to upgrading all urban streets to a sealed status and providing drainage to all unserved urban subdivisions.

**Officer's Comments/Conclusion**

Across the Shire, there are a significant number of urban areas and a significant portion of the road network that is unconstructed together with inadequate stormwater drainage. This portion of the road network comprises of over 120 kilometres of unmade roads within urban areas. The unmade urban road network does not provide for a safe, effective and sustainable road network that performs to the needs and the expectations of the community.

Community expectation on the level of infrastructure within urban areas is increasing. This is reflected in the considerable number of requests from residents and ratepayers within urban areas to alleviate issues with dust, mud, poor road surface and address poor stormwater drainage.

In addition to this, the unmade roads and insufficient drainage across the Shire's urban areas results in considerable maintenance costs to Council's ratepayers to ensure that the unmade road network is maintained in accordance with Council's requirements under the Road Management Act.

Due to the extensive length of unmade roads and insufficient drainage within urban areas across the Shire, Council is not in a position to fully fund the upgrade of road and drainage infrastructure in these areas. Like some other Council's, this Council has a legacy of a large number of urban areas with poor infrastructure.

In order to address this lack of infrastructure Council made a commitment to improve these areas under its Urban Streets Improvement policy. This policy reinforces Council's commitment to upgrade and maintain all the urban streets to a sealed status and to provide drainage to all unserviced subdivisions in the Shire.

Prepared as part of this policy was a comprehensive priority list of all urban areas which do not have a satisfactory level of infrastructure, consistent with what is required within urban residential areas. This priority list was prepared based on a number of key evaluation criteria.

Over the past 18 years Council has successfully completed a number of both large and small infrastructure improvement projects.

These include, but are not limited to areas such as:

- McKenzie Estate, Cowes
- Coronet Bay
- Cape Woolamai West
- Pine Ave/Churchill Drive Area, Cowes
- South Dudley Estate
- White Road, Wonthaggi
- Graham Street, Wonthaggi
- Tenby Point
- Webb Drive, Wonthaggi
- Boys Home Road, Newhaven
- Strickland Street, Wonthaggi

- Hospital Drive, Court Street and Easton Street Area Wonthaggi

These large schemes alone had a total value of approximately \$30.7 million and provided infrastructure upgrades to over 30 kilometres of unsealed road to a fully constructed standard and providing underground drainage for 2933 properties.

Through Council undertaking these past schemes it has shown that generally the level of objection towards a scheme is in the order of 30-45% objection for the large scale schemes. The level of objection to the proposed scheme and infrastructure upgrades at Cape Paterson was 64%. The level of objection at Cape Paterson was considerably higher than what has been experienced in the past.

However, it is difficult to ascertain from the objections/submissions received the true reasons as to why property owners did not support the upgrade of road and drainage infrastructure in the area. Over 80% of the objections received from property owners did not provide any reason or explanation in their objection as to why they did not support the scheme. However factors that are likely to have contributed to the scheme and the resulting infrastructure upgrade not being supported by the community are considered below.

- the cost imposition of the special charge on ratepayers/property owners
- a high percentage of non resident ratepayers/property owners not seeing the value of upgrading infrastructure adjacent to their non-permanent residence
- a strong campaign run by a group of property owners that aimed to prevent the scheme from proceeding
- unrealistic expectations that Council's current level of general rates is sufficient to fund major road and drainage upgrades
- scepticism within the community that the reasons for the proposed infrastructure upgrade was due to the EcoVillage development to the west of the existing Cape Paterson area and the impending development to the north of the Cape Paterson area

Unfortunately, the community's decision to not support the proposed scheme will mean that infrastructure within the Cape Paterson area will not be upgraded and that Cape Paterson will move to the bottom of the priority list. This will have a significant impact on the community in this area into the future. Cape Paterson is expected to grow with future development which will put added pressure on the areas that already have insufficient infrastructure. In addition to this, a lot of property owners highlighted issues with drainage in several areas across the Cape Paterson area during the community consultation undertaken with property owners. Given that most property owners in these areas objected to the scheme, indicates that whilst these property owners would like a resolution to these drainage issues they are not prepared to contribute towards the costs to provide the necessary infrastructure to address these issues which cannot be resolved through routine maintenance.

Whilst Council's existing policy relating to the upgrade of infrastructure in urban areas has resulted in the upgrade of over 30 kilometres of unsealed roads and associated drainage, resulting in improved liveability for approximately 3000 properties across the Shire, it is well outdated. Whilst it has been due for review for some time, the result of the submission process for the proposed Cape Paterson special charge scheme further highlights the need to review the existing policy.

In light of the outcome to the proposed scheme and infrastructure upgrades in the Cape Paterson area there are a number of things that Council may wish to consider as part of the review of the Urban Streets Improvement Policy.

The adoption of the existing policy and the underlying principle of those that benefit from the upgrade within a particular urban area, should contribute towards the costs of the upgrade through a user pays system, such as a special charge, ensures a fair and equitable imposition of rates for all ratepayers across the Shire.

Infrastructure upgrades in urban residential areas across the Shire ensure that Council can keep rates affordable for all within the Shire, by minimising its liability to ongoing maintenance costs. Currently, urban residential areas with unsealed roads and no drainage across the shire result in maintenance costs three times the amount per kilometre when compared to those areas where appropriate infrastructure exists. This highlights that those that live in areas with insufficient infrastructure are having the maintenance of their urban streets subsidised by those that live in areas with sufficient infrastructure, of which was paid for at some time in the past either through a previous special charge scheme or through a new development.

As such, the decision by the Cape Paterson community to not support the scheme and therefore the upgrade of infrastructure will mean that this area of the Shire will attract higher maintenance costs into the future compared to if the scheme had proceeded.

Council may wish to consider some policy direction through the review of the existing policy to address this. Options such as a differential rate, maintenance levy or reduced maintenance levels may ensure that Council continues to provide the equitable imposition of rates in light of a community not supporting a scheme to fund the upgrade of infrastructure in their area.

Another important consideration with the review of the policy is to look at the future priorities for road and drainage upgrades within the Shire. Currently, two schemes have been budgeted for within past budgets and the current budget – Sunset Strip Area and Pioneer Bay Estate. As such there is an expectation within those communities that a road and drainage upgrade proposal is going to be developed for their consideration.

It is recommended that Council review the Urban Streets Improvement Policy, including the review of the areas to be prioritised.

### **Recommendation**

**That the Council, having given notice of its intention to declare a Special Charge Scheme under Section 163 of the *Local Government Act 1989* (“the Act”) on 26 February 2014, now resolves:**

- 1. To abandon the Cape Paterson Area Special Charge Scheme No. 27 in accordance with 163B(6) of the Act, by discontinuing the scheme process as a result of receiving a majority of objections to the proposed scheme.**
- 2. Council complete a review of the Urban Streets Improvement Policy and associated procedures by 30 June 2015.**

**Attachments**

**AT-1** *CONFIDENTIAL* - Attachment 1 - Cape Paterson objections only 242 Pages

**AT-2** *CONFIDENTIAL* - Attachment 2 - Cape Paterson submissions 148 Pages