8.5 The Esplanade (Sunderland Bay Road to Zephyr Court)

Division	**Future Places**
Council Plan Strategic Objective	**Thriving Places** *Facilities and infrastructure meet current and future needs. Growth is sustainable and well planned. Our economy, agriculture, tourism and industries are resilient. Unique character is preserved.*

Declaration

The author has no general or material interests in relation to this report.

Summary

This report recommends that Council resolve not to proceed with the proposed Special Charge Scheme, in its current form, for The Esplanade (Sunderland Bay Road to Zephyr Court) in Sunderland Bay.
At its meeting on 16 July 2025, Council gave public notice of its Intent to Declare a Special Charge Scheme for the purposes of upgrading road and drainage infrastructure along this section of The Esplanade.
Subsequent to this resolution, a property within the Scheme area has lodged an approved plan of subdivision, resulting in a change to the number of benefiting properties. This has implications for the benefit ratio and the distribution of the special charge amongst property owners.
To ensure compliance with legislative requirements and to maintain fairness in the allocation of costs, a revised scheme will be prepared and presented for Council's consideration at a future date. The presentation of a revised scheme will formally recommence the legislative process required for the declaration of a special charge scheme.

Recommendation

That Council:

1. **Resolve not to proceed with the proposed Scheme in its current form.**
2. **Initiate a new statutory process by presenting a revised scheme at a future Council Meeting.**
3. **Notify all affected property owners of the updated status of the proposed Scheme and provide information regarding the timeline and opportunities to participate in the revised legislative process.**

Background

Council's Urban Roads and Drainage Improvement (URDI) Policy 2024 provides a framework for future upgrades to areas across Council with unconstructed streets and inadequate drainage.
At the March 2024 Council meeting, Council received a petition from property owners requesting a road and drainage upgrade project for The Esplanade between Sunderland Bay Road and Zephyr Court, Sunderland Bay.
At the June 2024 Council meeting, Council resolved to:

1. Proceed with the initiation of the upgrade project along The Esplanade between Sunderland Bay Road and Zephyr Court, Sunderland Bay.

2. Note that the preferred concept designs and funding mechanism for a potential upgrade project would need to be considered at a future meeting of Council.

3. Advise the head petitioners of Council's decision.

In the development of the preferred design option, Council completed deliberative community engagement with residents to identify any problems and to prepare a concept plan to resolve any issues. Between 31 July 2024 and 28 August 2024, Council officers engaged with affected property owners on a range of concept options and costs, so that a preferred option from the community was understood.
At the 16 July 2025 Council Meeting, Council resolved to:

1. *Adopt the concept option for the road and drainage upgrade project proposed for The Esplanade (Sunderland Bay Road to Zephyr Court)*
2. *Commence the statutory process under Section 163 of the Local Government Act 1989 (Act) to declare at the 19 November 2025 Council Meeting a Special Charge for the purpose of defraying the expenses and costs to be incurred by Council in relation to the project*
3. *Give public notice in the 'South Gippsland Sentinel Times' and the 'Phillip Island and San Remo Advertiser' of Council's intention to declare a Special Charge Scheme*
4. *Notify property owners referred to and set out in Schedule 2 of Council's Intention to Declare a Special Charge Scheme*
5. *Establish (if required) a Committee of Council to hear any persons who requested to be heard in support of their submission*
6. *Authorise the Council's General Manager Future Places (or any person for the time being acting in that position) to carry out any and all other administrative procedures to enable Council to carry out its functions under the Act*

Discussion

At the 16 July 2025 Council Meeting, Council resolved to initiate the statutory process to declare a special charge scheme for the purpose of upgrading road and drainage infrastructure along The Esplanade, between Sunderland Bay Road and Zephyr Court, in Sunderland Bay. The proposed Scheme included 23 properties that were deemed liable to pay, based on the level of benefit each property would receive from the proposed road and drainage upgrade.

During the submissions and objections process, Council officers became aware of the finalisation of a subdivision within the scheme area at The Esplanade in Sunderland Bay. This occurred due to the lodgment of a certified plan of subdivision to Land Use Victoria (Property Titles Office) occurring after Council completed the Intent to Declare process.

Council officers sought legal advice to determine the impact of the subdivision on the Scheme in its original form, and whether the Scheme would need to be revised, and a new legislative process commenced.

Section 163(2BA) of the *Local Government Act 1989* (Act) provides that Council must not make a declaration which has been altered from the form specified in the public notice if the effect of the alteration is to increase the liability of any person to pay the special charge unless:

a. the alteration is made in response to a submission or objection received in response to the proposed declaration; and

b. the increase in the liability of any person to pay the special charge does not exceed 10%.

As the subdivision results in an increase in the special charge liability for an affected property owner by more than 10%, Council is unable to proceed with the declaration in its current form.

Council officers will now prepare a revised proposed declaration that incorporates all 24 properties located within the scheme boundaries. This revision will ensure that the apportionment of costs is equitable across all benefiting properties and that the benefit ratio accurately reflects the level of benefit received by individual property owners and the wider community.

A revised proposed declaration will be presented at a future Council Meeting, at which time Council will give public and statutory notice of its intent to declare a special charge scheme. Property owners will again be provided with the opportunity to make written submissions and/or objections in accordance with the requirements of the Act.

Sustainability Implications

The proposed and preferred concept design option adopted by Council at the 16 July 2025 Council Meeting achieves a strategic balance between minimising cost to property owners and Council and improving road safety, accessibility, visual amenity, and reduced flood risk.

Investing in road and drainage infrastructure will position the community to better withstand current and future extreme weather events, strengthening the community's resilience to climate change impacts.
Road upgrades will generally follow the existing alignment of roads, while footpaths will be designed to avoid disruption to established vegetation. Due diligence reports are undertaken to ensure consideration is given to protecting local fauna and flora and to mitigate potential environmental impacts.

Finances

A total estimated project cost of $1,849,550 was adopted by Council at the 16 July 2025 Council Meeting for the upgrade of roads and drainage along The Esplanade (Sunderland Bay Road to Zephyr Court).
A revised maximum total levy to be recovered from property owners and Council contribution will be presented with a new scheme.

Stakeholders

In line with the requirements of the Act, public notices of Council's Intention to Declare the Special Charge were published in the 'South Gippsland Sentinel Times' on 22 July 2025 and in the 'Phillip Island and San Remo Advertiser' on 23 July 2025, and on Council's engagement website. The notices advised of Council's Intention to Declare the Special Charge and invited submissions and/or objections in relation to the proposal. Property owners included in the Scheme were informed of Council's Intention to Declare the Special Charge Scheme and their right to make a submission and/or an objection by way of a hard copy letter sent to them on 23 July 2025 to their preferred postal address as recorded in Council's database. A copy of this correspondence was sent to the preferred email of available property owners as recorded in Council's database.
Additionally, all property owners were sent a package of information including the following details:

- the overall cost of the project
- the amount of cost to be levied as a Special Charge
- the individual Special Charge for each property owner
- the cost to be borne by Council
- the timing of the proposed Special Charge
- the payment options of the Special Charge and
- instructions and requirements for submissions and/or objections to the proposed Special Charge

Details of the Proposed Declaration of the Special Charge were also provided on Council's engagement website and hardcopies of the Proposed Declaration of the Special Charge were also made available for inspection at customer service centers across the Shire.

Property owners and any other persons with an interest in the matter were required to return their submissions and/or objections to the Proposed Declaration of Special Charge by 17 September 2025. This provided 40 business days' notice and was otherwise in accordance with the requirements of the Act.
Property owners were provided with a template in which they could 'support' or 'object' to the Scheme and were provided with an area to submit written comments. Property owners were also able to make submissions by any other written method they chose. This template was also available to the broader public on Council's engagement website.
The details of individuals making a submission and/or objection were confirmed on receipt to ensure they matched the property owner's details as per Council's database. Council received a total of 13 formal submissions from 23 property owners. There were 3 (13%) submissions of objection and 10 (43.5%) submissions of support from property owners to the proposed upgrade project. A total of 10 (43.5%) property owners did not provide any response. A summary of the responses from property owners is shown in Figure 1 below.

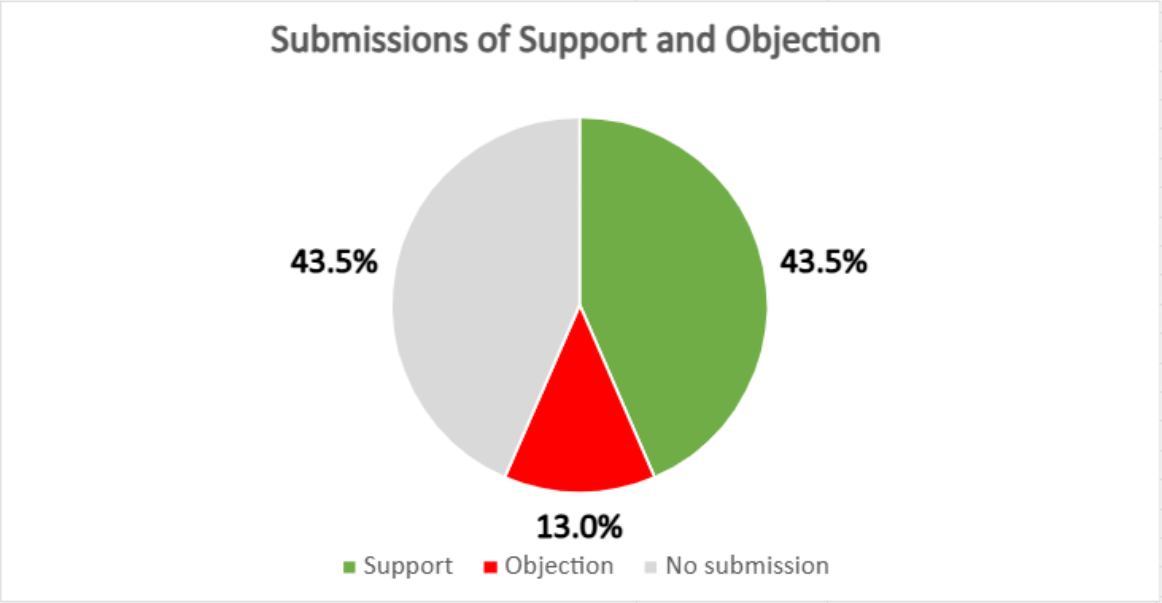


Figure 1: percentage breakdown of submissions of support and objection received from property owners

There were 3 requests to be heard by the Council or by a Committee of the Council. The main feedback received in the submissions and objections, by way of summary, were;

Feedback	**Number**
Not in line with natural characteristic of area	3
Lower cost solutions should be explored instead	2

Negative impact on environment and wildlife	2
Not a good use of Council funds	2
Increased traffic speeds and through traffic	2
Apportionment should be on road frontage only	1
Council has disregarded outcome of the 2023 Sunderland Bay Surf Beach proposed Special Charge Scheme	1
Council should contribute for the discounts provided to corner properties	1
Council should fully fund upgrade	1
Discount at 74 The Esplanade viewed as inequitable; redistribution requested	1
Disruption during works	1
Footpaths should be mandatory on main connector roads	1
Hardship option offered is limited	1
High financial burden	1
Inconsistent with Phillip Island Nature Parks Plan	1
Interim dust reduction treatments should be employed prior to upgrade	1
Lack of consultation	1
Lack of transparency	1
Proposed interest rate is excessive	1
Request for consideration of discount at 32 The Esplanade for reduced benefit	1
Speed limit should be lowered along The Esplanade	1
Street by street approach is fragmented	1
The consideration of 56 The Esplanade as one property is inequitable	1
The Sunderland Bay Bluff Car Park should be sealed at the same time	1

Beyond this summary, copies of all written submissions and objections received by Council under sections 223 and 163B of the Act have been provided to all Councilors with their agenda papers for this meeting (Attachment AT-6).

Conclusion

The lodgment of an approved plan of subdivision within the Scheme boundaries of the proposed road and drainage upgrade along The Esplanade, between Sunderland Bay Road and Zephyr Court, in Sunderland Bay, has resulted in a material change to the proposed declaration specified in the public notice made at the 16 July 2025 Council Meeting. To ensure compliance with legislative requirements, Council is now unable to proceed with the Scheme in its current form.
To maintain fairness in the allocation of costs and ensure the benefit ratio accurately reflects the number of benefiting properties, Council officers will prepare a revised scheme for Council's consideration at a future meeting. This will formally recommence the statutory process required for the declaration of a special charge scheme.
Affected property owners will be notified of the updated status of the proposed Scheme and provided with information regarding the timeline and opportunities to participate in the revised legislative process.

Governing Documents

There are 9 governing documents listed below that are related to this proposed upgrade project.

- Local Government Act 1989
- Local Government Act 2020
- Council Plan 2025-29
- Bass Coast Planning Scheme
- Asset Management Policy 2022-2026
- Urban Roads and Drainage Improvement Policy 2024
- Debt Management Policy
- Hardship and Financial Hardship Policy
- Long-Term Financial Plan 2025-2035

Attachments

1. CONFIDENTIAL - A T-6 Submissions [**8.5.1** - 34 pages]