



12.1 PROPOSED CARLISLE STREET SPECIAL RATE
DECLARATION REPORT

EXECUTIVE MEMBER: LAUREN BIALKOWER, ACTING GENERAL MANAGER, CITY
GROWTH AND DEVELOPMENT

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1. PURPOSE

1.1 To determine whether Council supports the declaration of the Carlisle Street Special Rate (**Special Rate**) for 2023 – 2028 period.

2. EXECUTIVE SUMMARY

- 2.1 The Carlisle Street Traders Association (**Association**) have formally requested that Council introduce the proposed Special Rate for a five-year period.
- 2.2 The proposed Special Rate would commence on 1 July 2023 ending on 30 June 2028.
- 2.3 Its purpose is for marketing, promotion, business development and centre management of the specified Activity Centre.
- 2.4 In accordance with sections 163, 163A, 163B and 223 of the *Local Government Act 1989 (Act)*, Council considered all submissions and objections from affected property owners and business operators at its ordinary meeting held on 19 April 2023. All written and verbal submissions were considered at this meeting.
- 2.5 Following consideration of the submissions and objections received Council needs to determine a final position on the proposed Special Rate.

DISCUSSION

2.6 OPTIONS

After considering the submissions and objections in relation to the proposed Special Rate, Council has the following Options:

- **Option 1** - Council considers all submissions and objections received in relation to the Special Rate in accordance with the Act and information provided by Council Officers. Council decides that there are insufficient objections (less than 51 percent) to abandon the Special Rate and proceeds to declare the Special Rate commencing 1 July 2023.
- **Option 2** - Council after considering all submissions and objections received in relation to the Special Rate in accordance with the Act decides to abandon the proposed Special Rate and does not declare a Special Rate for Carlisle Street.



3. RECOMMENDATION

That Council:

- 3.1 Having considered all submissions received and taken account of all objections lodged and complied with the requirements of sections 163, 163A, 163B and 223 of the *Local Government Act 1989 (Act)*, and otherwise according to law, hereby declares the Carlisle Street Special Rate under section 163(1) of the Act for the sole purpose of marketing, promotion, business development of the Carlisle Street Business Precinct as detailed in the attached draft Declaration of Special Rate (Attachment One).
- 3.2 Authorises the Carlisle Street Traders Association (Association) to administer the proceeds of the Special Rate on the express condition that the Association enters into a funding agreement with Council for the period of the Special Rate.
- 3.3 Authorises Council's CEO, or delegate, for the purposes of paragraph 3.2 of this resolution, to prepare the funding agreement between Council and the Association by which administrative arrangements in relation to the Special Rate are confirmed, such agreement being to ensure that at all times, and as a precondition to the payment of any funds by Council to the Association, Council is, and remains legally responsible for approving, directing and controlling the expenditure of the proceeds of the Special Rate in accordance with its obligations under the Act to do so, and such funding agreement to be submitted to Council for signing.
- 3.4 Gives notice to all owners and occupiers of properties included in the Special Rate and all persons who have lodged a submission and/or objection of the decision of Council to declare and levy the Special Rate commencing on 1 July 2023, and the reasons for the decision.
 - 3.4.1 For the purposes of paragraph 3.4 of this resolution, the reasons for the decision of Council to declare the Special Rate are that:
 1. there were 13.06 percent valid objections to the Special Rate, and it is otherwise considered that there is a broad level of support for the Special Rate from all property owners and occupiers;
 2. Council considers that it is acting in accordance with the functions and powers conferred on it under the Act, having regard to its role, purpose and objectives under the Act, particularly in relation to the encouragement of commerce, retail activity and employment opportunities in and around the Special Rate area;
 3. all persons who are liable or required to pay the Special Rate and the properties respectively owned or occupied by them will receive a special benefit in the form of an enhancement or maintenance in land values and /or a maintenance or enhancement in the use, occupation and enjoyment of the properties; and
 4. the basis of distribution of the Special Rate amongst those persons who are liable or required to pay the Special Rate is considered to be fair and reasonable.
- 3.5 Advises the Association of the matters specified in paragraphs 3.1, 3.2 and 3.3 of this resolution.
- 3.6 Notes the properties that are included in the Special Rate area will be subject to general re-valuations and supplementary valuations on the same cycle as the City of Port Phillip general rates and charges.



4. KEY POINTS/ISSUES

BACKGROUND

- 4.1 Special Rate declarations are a statutory process governed by Part 8 of the *Local Government Act 1989 (Act)*. Despite the enactment of the *Local Government Act 2020*, the Special Rates provisions of the Act are still in force. In declaring a Special Rate, Council must consider that:
- 4.1.1 the proposal relates to the performance of a function authorised under Section 163 of the Act;
 - 4.1.2 there will be a special benefit to those persons liable to pay the Special Rate levy; and
 - 4.1.3 there is a reasonable distribution of the rate amongst those persons liable to pay the Special Rate levy.
- 4.2 On 5 January 2023, Council received a letter from the Association requesting that Council begin the statutory process to introduce the Special Rate for five years, from 1 July 2023 to 30 June 2028.
- 4.3 In December 2022 and January 2023, the Association visited all open businesses in the precinct (245 businesses) and undertook a business poll to gauge support for striking a new Special Rate, given the difficult economic climate. The Association received signed support from 103 out of the 196 properties currently occupied, open and available for comment for the Special Rate, which represented 53 percent. This is comparable to the support received by the Port Melbourne Business Association in their last renewal.
- 4.4 The proposed new Special Rate is for a five-year period (2023 – 2028) and includes 245 properties. The proposed Boundary Map is attached (**Attachment 2**).
- 4.5 The proposed 2023 – 2028 Special Rate is modelled to raise up to \$200,000 per annum in each of the financial years from 2023-2024 to 2027-2028.
- 4.6 At the ordinary meeting of Council held on 1 February 2023 Council resolved to commence the statutory process in February 2023 under the Act to introduce a Special Rate and for the properties within the defined Carlisle Street Business Precinct. Such Special Rate is to raise up to \$200,000 per annum in each of the financial years from 2023-2024 to 2027-2028.
- 4.7 In accordance with Council's statutory obligations under sections 163(1A) and 163B(3) of the Act, a Public Notice was published in The Age on the 6 February 2023, outlining the details of the proposed declaration of Special Rate. This Public Notice commenced the statutory consultation process. The process concluded at 5pm on 9 March 2023.
- 4.8 On 3 February 2023, Council sent individual letters to all affected property owners and occupiers within the proposed Carlisle Street boundary, advising of the Intention to Declare the Special Rate, the commencement of the statutory process including a copy of the Public Notice and an estimation of the levy based on 2022 Capital Improved Value (CIV) valuations that would be applied to the property.
- 4.9 Within the statutory consultation period, between 6 February and 9 March 2023, Council received:
- two submissions from business owners representing two properties in support of the Special Rate;



- two submissions from business owners representing two properties seeking an exemption from the Special Rate (which Council officers have deemed as objections to the proposed Special Rate); and
 - 32 valid and 21 invalid objections from 38 property and business owners representing 53 properties objecting to the proposed Special Rate.
- 4.10 The total number of valid objections received equates to 13.06 percent of the total proposed rateable properties (245).
- 4.11 Section 163B(6) of the Act states that Council cannot make a declaration of special rate if it receives objections from a majority of the rateable properties in respect of which the special rate would be imposed (that being 51 percent). In this case, Council has not received a majority of objections to the proposed Special Rate.
- 4.12 Council must consider all submissions and objections received in relation to the Special Rate in accordance with the Act prior to making a decision regarding the declaration of the proposed Carlisle Street Special Rate.
- 4.13 At the ordinary Meeting of Council held on 19 April 2023, in accordance with the statutory process, Council considered all submissions and objections from affected property owners and business operators. All submissions were considered at this meeting. A vote to move to determine a final decision at its ordinary meeting on 17 May 2023 was taken and the Motion was carried unanimously.

KEYPOINTS:

- 4.14 The City of Port Phillip currently has three Special Rate schemes in operation – Port Melbourne, Acland Street Village and Fitzroy Street. All Port Phillip schemes incorporate the collection of a levy from commercial properties within a defined geographic area, for the sole purpose of marketing, promotion and business development of the specified activity centre.
- 4.15 Council does not have a threshold of support required to declare a special rate. It has chosen to include targets that must be met to support renewal in certain funding agreements, and this is something it can consider for Carlisle St if it wishes to.
- 4.16 All funds collected are distributed to the relevant incorporated Business Association under a funding agreement with Council.
- 4.17 The proposed new Special Rate is for a five-year period (2023 – 2028) and includes 245 properties.
- 4.18 If redevelopments occur within the proposed Special Rate boundary any new eligible properties that have not previously been levied will be added to the Special Rate. Any property that changes from commercial, retail, leisure, tourism or light industrial to residential use will be removed from the Special Rate. Amendments to the Special Rate will occur from the date the supplementary valuation takes effect.
- 4.19 Properties exempt from paying the Special Rate levy include:
- all residential properties;
 - automatic teller machines; and
 - non-rateable properties.



- 4.20 With the completion and review of Special Rate modelling, the Association requested that Council declare a Special Rate of up to \$200,000 per annum in each of the financial years from 2023-2024 to 2027-2028.
- 4.21 It is proposed that the two benefit levels for the Special Rate will include:
- the primary benefit level, which includes properties that are used, or reasonably capable of being used, for retail, commercial, leisure, tourism, entertainment, light industrial or professional purposes and are:
 - fronting and at ground level on Carlisle Street (between St Kilda Road and Carlisle Avenue/Orange Grove);
 - 54 Camden Street;
 - located at ground level within the arcades at 232 Carlisle Street and 246-252 Carlisle Street; and
 - in the opinion of Council receive a primary special benefit; and
 - the secondary benefit level, which includes all other properties identified in the Eligible Properties section in Attachment 2 that are:
 - not included in the primary benefit area;
 - used or reasonably capable of being used for retail, commercial, leisure, tourism, entertainment, light industrial or professional purposes; and
 - in the opinion of Council receive a secondary special benefit.
- 4.22 The rates in the dollar applicable to the Special Rates in both the primary and secondary benefit levels will be determined at the beginning of each financial year to achieve a Special Rate of up to \$200,000 per annum.
- 4.23 The rate in the dollar applicable to the Special Rate in the primary benefit level will be determined at the beginning of each financial year based on the CIV of all the properties in that area at that time.
- 4.24 The rate in the dollar applicable to the Special Rate in the secondary benefit level will be determined at the beginning of each financial year based on 50 percent of the rate applicable to the primary benefit level.
- 4.25 The formula to calculate the Special Rate of up to \$200,000 per annum includes:
- Primary benefit rate is \$200,000 divided by total sum value of the CIV of all properties in the Special Rate defined area (this includes properties paying either the primary or secondary benefit rate); and
 - Secondary benefit rate is 50 percent of the primary benefit rate.
- 4.26 The proposed Special Rate details, based on 2023 CIV valuations, to achieve the Special Rate of up to \$200,000 per annum are:
- Primary benefit rate – 0.0007044
 - Secondary benefit rate – 0.0003522
 - Property levy average – \$816.33
 - Property levy median – \$686.75
- 4.27 The Association has developed its Business Plan for the proposed 2023 – 2028 Special Rate as well as a Budget and Marketing Plan for 2023 – 2024 (**Attachment 4**) and will form part of the new funding agreement with Council.



- 4.28 The Special Rate will be for the sole purpose of marketing, promotion, business development and centre management of the specified Activity Centre. It is considered that the value of the properties included in the Special Rate, their desirability as a letting proposition and their general amenity could be enhanced by the activities generated from the Special Rate funds.
- 4.29 Council is undertaking a range of initiatives to support Carlisle Street traders including a vacant shopfront program, the Coles carpark redevelopment, an increased focus on cleaning and maintenance, and commencing discussions on potential council infrastructure investments in our priority mainstreets including Carlisle St. Having an association to partner with on these initiatives would be beneficial.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 A public notice was published in the Age and on Council's website on the 6 February 2023, outlining the details of the proposed declaration of Special Rate. This Public Notice commenced the statutory consultation process. The process concluded at 5pm on 9 March 2023.
- 5.2 On 3 February 2023, Council sent separate letters to all affected property owners and occupiers within the proposed Carlisle Street boundary, advising of the Intention to Declare the Special Rate, the commencement of the statutory process including a copy of the Public Notice and an estimation of the levy based on 2022 CIV valuations that would be applied to the property.
- 5.3 Council acknowledged receipt of all submissions and objections and provided details of the Council Meeting at which those persons could speak to their submission.
- 5.4 At the ordinary Meeting of Council held on 19 April 2023, in accordance with statutory process, Council considered all objections and submissions from affected property owners and business operators. All objections and submissions were considered at this meeting. A vote to move to determine a final decision at its ordinary meeting on 17 May 2023 was taken and the Motion was carried unanimously.
- 5.5 Following the ordinary Council Meeting on 19 April 2023, Council Officers circulated the Association's five-year Business Plan and FY23/24 Budget and Marketing Plan on 21 April 2023 to those who submitted an objection or submission, and objectors and submitters were asked if they wished to change or withdraw their objection or submission after reviewing the Plans. Council did not receive any changes to the submissions previously submitted by objectors that were included as a Confidential Attachment in the Council Report on 19 April 2023.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The risks associated with the proposal are limited by the following:
- 6.1.1 Maddocks have provided legal advice for the statutory processes associated with the request to declare a Special Rate and the objection count was independently conducted by Maddocks.
- 6.1.2 The number of valid objections received for the Special Rate does not exceed 50 percent of the total properties in accordance with Section 163B(6) of the Act.
- 6.1.3 If the Special Rate is declared, the Association will enter into a formal funding agreement with Council for the duration of the Special Rate which outlines the specific purposes for which the funds can be spent (being the purposes for which the Special Rate is declared).



- 6.1.4 Under the terms of the proposed funding agreement, the Association:
 - 6.1.4.1 will be required to submit an Activity Report that includes financial reporting documentation every six months (profit and loss, balance sheet, general ledger, and marketing activity report). Special Rate monies will not be paid to the Association until all reporting is received and approved.
 - 6.1.4.2 must be an incorporated entity through the life of the Special Rate and must act in accordance with the Associations Incorporation Reform Act 2012.
 - 6.1.4.3 will be required to adopt their five-year Business Plan to guide expenditure of the funds (Attachment 4).
 - 6.1.4.4 will be required to adopt their annual Budget and Action Plan that details how the operating budget will be spent (Attachment 4).
- 6.1.5 The Association will expend the monies raised by the Special Rate on behalf of Council as an administrator of the funds and at all times bound by the funding agreement with Council and under the direction of Council, and Council will reserve solely all discretions relevant to the application of the proceeds of the Special Rate. Section 164 of the Act enables Council to discontinue the Special Rate if there is any inappropriate expenditure.
- 6.1.6 If Council does not wish to support the Special Rate, there may be an expectation from the commercial precinct that Council will fund marketing and promotion activities for the precinct.
- 6.1.7 If Council proceeds with the declaration at its Ordinary Meeting on 17 May 2023, a person on whom the Special Rate is imposed then has 30 days from the date of issue of a Notice of declaration of the Special Rate to apply to VCAT for a review of a decision of Council to impose a Special Rate on that person, on limited grounds under section 185 of the Act.
- 6.1.8 Section 185AA of the Act provides a separate right to apply to VCAT for a declaration as to the validity of Council's decision. An application for a declaration can be made at any time.
- 6.1.9 If an application is lodged at VCAT, Council would consider whether to proceed with:
 - 6.1.9.1 the implementation of any Special Rate; or
 - 6.1.9.2 providing any monies raised to the Association until the application has been heard and there is a VCAT decision on the matter.

7. FINANCIAL IMPACT

- 7.1 Council incurs administrative costs for the introduction of the Special Rate. These have been included in the FY2023/2024 budget.
- 7.2 If the Special Rate is successful, ongoing resources will be required to monitor the Special Rate. This will be funded from the operational budget and supported via existing resourcing.
- 7.3 Council administers the collection of the funds of the Special Rate and would distribute the funds to Association in two half-yearly instalments, subject to it completing its reporting requirements under the proposed funding agreement



8. ENVIRONMENTAL IMPACT

- 8.1 A financially sustainable Association allows Council to work with Carlisle Street businesses on sustainable best practice programs that will reduce emissions, waste and energy usage and achieve improved sustainability outcomes.
- 8.2 Vibrant local activity centres provide residents with the opportunity to shop locally and sustainably by walking, cycling or taking public transport to access their centre rather than driving elsewhere.

9. COMMUNITY IMPACT

- 9.1 Vibrant activity centres are critical to the health and development of the local community. Centres provide employment, community meeting places, resources, leisure opportunities and essential services to the community.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 *Inclusive* Strategic Direction - A City that is a place for all members of our community, where people feel supported and comfortable being themselves and expressing their identities:
 - A successful business/retail precinct provides a multitude of services to the community ensuring all have access to health and wellbeing services and facilities. A community that is connected is a healthy community and business precincts provide these connectivity opportunities.
- 10.2 *Liveable* Strategic Direction - A City that is a great place to live, where our community has access to high quality public spaces, development and growth are well-managed, and it is safer and easy to connect and travel within:
 - Successful business/retail precincts underpin the liveability of a high-density city, like Port Phillip and are pivotal in creating a city of diverse and distinctive neighbourhoods and public spaces.
- 10.3 *Sustainable* Strategic Direction - A City that has a sustainable future, where our environmentally aware and active community benefits from living in a bayside city that is greener, cooler, cleaner and climate resilient:
 - There is opportunity for Council to work with Business Associations to educate and examine ways to 'green' businesses including waste reduction, energy usage, sustainable design, and use of sustainable transport.
- 10.4 *Vibrant* Strategic Direction - A City that has a flourishing economy, where our community and local businesses thrive, and we maintain and enhance our reputation as one of Melbourne's cultural and creative hubs:
 - Special Rate funds empower the business community to actively and creatively market, promote and develop their precinct to maintain vibrancy and economic viability and to provide the community with a well-resourced business precinct that provides excellent services, gathering places and employment.
- 10.5 *Well-Governed* Strategic Direction - A City that is a leading local government authority, where our community and our organisation are in a better place as a result of our collective efforts:



- Business Associations enable Council to efficiently understand business precinct needs and work with Associations in a collaborative way for the benefit of the community.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- Identify and outline the proposed next steps, timeframes and who will be involved.

If Council resolves to declare the proposed Special Rate for five years, from 1 July 2023 to 30 June 2028, at its Ordinary Meeting on 17 May 2023:

- 11.1.1 Council advises the Association of the Council decision on 18 May 2023 and commences drafting a formal funding agreement with the Association for the duration of the Special Rate which outlines the specific purposes for which the funds can be spent.
- 11.1.2 Council gives ratepayers notice by the nominated postal address and the street address in the designated Special Rate area of the decision regarding the Carlisle Street Special Rate, and provides the basis on which the Special Rate will be levied.
- 11.1.3 A person on whom a Special Rate is imposed then has 30 days from the date of issue of the Notice of declaration of the Special Rate specified in 11.1.2 of this report to apply to VCAT for a review of a decision of Council to impose a Special Rate on that person, on limited grounds under section 185 of the Act.
- 11.1.4 Section 185AA of the Act provides a separate right to apply to VCAT for a declaration as to the validity of Council's decision. An application for a declaration can be made at any time.
- 11.1.5 If an application is lodged at VCAT, Council would consider whether to:
 - 11.1.5.1 proceed with the implementation of any Special Rate; and
 - 11.1.5.2 provide any monies raised to CSTA;until the application has been heard and there is a VCAT decision on the matter.
- 11.1.6 Council will advise the Association of its decision.
- 11.1.7 If no application is made to VCAT, Council will commence the Carlisle Street Special Rate on 1 July 2023.
- 11.1.8 Affected rate payers will receive their levy notification to make payment via their Council rates notice in August 2023.

If Council resolves not to declare the proposed Special Rate at its Ordinary Council Meeting on 17 May 2023:
- 11.1.9 Council will advise the Association and all affected rate payers in writing of this decision and the proposed Special Rate will not proceed.

11.2 COMMUNICATION

- 11.2.2 Council advises the Association of Council's decision regarding the Special Rate.



- 11.2.3 Council advises, by letter, all the eligible ratepayers by their nominated postal addresses and the street addresses in the designated Special Rate Area of the decision regarding the Special Rate following the Ordinary Council Meeting on 17 May 2023.

12. OFFICER DIRECT OR INDIRECT INTEREST

- 12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS

1. Declaration of a Special Rate for the Carlisle Street Business Precinct 2023-2028 [↓](#)
2. Proposed Carlisle Street Rate Boundary Map [↓](#)
3. Submissions and Objections Summary [↓](#)
4. Carlisle Street Trader Association Five-Year Business Plan and FY23-24 Budget and Marketing Plans [↓](#)