



12.1 **CARLISLE STREET SPECIAL RATE REVIEW -
CONSIDERATION OF SUBMISSIONS**

EXECUTIVE MEMBER: **BRIAN TEE, GENERAL MANAGER, CITY GROWTH AND
DEVELOPMENT**

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1. PURPOSE

- 1.1 To consider the written submissions and objections received by Council and to hear persons speaking in support of their submissions and objections pursuant to the statutory process to introduce the Carlisle Street Special Rate for 2023 – 2028.

2. EXECUTIVE SUMMARY

- 2.1 Council must consider all submissions and objections received in relation to the Special Rate in accordance with Sections 163A, 163B and 223 of the *Local Government Act 1989* (the “**Act**”) prior to making a decision regarding the declaration of the Carlisle Street Special Rate.
- 2.2 In December 2022 and January 2023, the Carlisle Street Traders Association (“the **CSTA**”) collected business support signatures from 103 out of the 196 properties currently occupied, open and available for comment, which assisted in gauging whether there was enough support to move forward with the introduction of the Special Rate.
- 2.3 On 6 February 2023 Council published notice of the proposed Special Rate. Copies of the notice were sent to persons who would be liable to pay the Special Rate, if declared.
- 2.4 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 also 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.
- 2.5 Council officers calculate valid objections equating to 13.06 percent and total objections including invalid equating to 21.63 percent of the total proposed rateable properties included in the Special Rate (being 245 properties).
- 2.6 Under Section 163B of the Local Government Act 1989, any person who will be required to pay the proposed special rate or charge is entitled to exercise the right of objection. For an objection from an occupier/tenant to be valid under the Act, documentary evidence is required which shows that the occupier/tenant will be required to pay the special rate or special charge as a condition of their lease. Where



this evidence was requested and not provided, an objection was determined to be invalid.

- 2.6.1 Section 163B(6) of the Act states that Council cannot make a declaration of a Special Rate if it receives objections from a majority of the rateable properties in respect of which the Special Rate would be imposed (exceeding 50 percent). In this case, Council has not received objections from a majority of rateable properties to the proposed Special Rate.
- 2.7 Many of the objections were based on financial hardship for both landlords and businesses, because of the pandemic and economic difficulties given inflationary pressures leading to an uncertain future over the next five years. Objectors also said that they will receive little to no benefit from the proposed Special Rate and the Association has no business plan, no benchmarks for success, no procedures in place regarding expenditure.
- 2.8 A summary of the submissions and objections are outlined in the attached table (**Attachment 1**). Property and business owners that made submissions and objections have been invited to speak to their submissions and objections at this meeting. Copies of all the submissions and objections received have been provided to all Councillors.
- 2.9 In considering and hearing the submissions and objections and deciding in whether to declare the Special Rate, consideration should be given to the following:
 - 2.8.1 whether the basis distribution of the Special Rate on properties liable to pay it is fair and equitable and that all affected properties will receive a special benefit as a result of the Special Rate.
 - 2.8.2 whether there is a need to modify the Special Rate due to inaccuracies within the Public Notice or abandon the proposed Special Rate.
 - 2.8.3 The views of those who responded.

3. RECOMMENDATION

That Council:

- 3.1 Considers all written submissions and objections and hears persons who have requested to speak in support of their submissions and objections in respect to the proposed Carlisle Street Special Rate 2023 - 2028 and in accordance with sections 163A, 163B and 223 of the *Local Government Act 1989*.
- 3.2 Notes it will make a formal decision on whether to declare the Carlisle Street Special Rate 2023 - 2028 at its ordinary meeting on 17 May 2023.

4. KEY POINTS/ISSUES

BACKGROUND

- 4.1 Special Rate declarations are a statutory process governed by Part 8 of the *Local Government Act 1989*. Despite the enactment of the *Local Government Act 2020*, the Special Rates provisions of the 1989 legislation 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 CSTA requesting that Council begin the statutory process to introduce the Carlisle Street Special Rate for five years, from 1 July 2023 to 30 June 2028.
- 4.3 In December 2022 and January 2023, CSTA 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 CSTA 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.
- 4.4 The proposed new Special Rate is for 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 the 1 February 2023 Council resolved to commence the statutory process in February 2023 under the *Local Government Act 1989* 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 Carlisle Street 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.

KEYPOINTS:

- 4.9 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.
- 4.10 All funds collected are distributed to the relevant incorporated Business Association under a funding agreement with Council.
- 4.11 The proposed new Special Rate is for a five-year period (2023 – 2028) and includes 245 properties.
- 4.12 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.



4.13 Properties exempt from paying the Special Rate levy include:

- all residential properties;
- automatic teller machines; and
- non rateable properties.

4.14 The CSTA is currently developing its Business Plan for the proposed 2023 – 2028 Special Rate as well as a Budget and Action Plan for FY2023/2024. It is expected that this will be finalised for the implementation of the new Special Rate and will form part of the new funding agreement with Council.

4.15 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.

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 Carlisle Street 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.

5.3 Council has acknowledged receipt of all submissions and objections and has provided details of the Council Meeting at which those persons may speak to their submission.

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 *Local Government Act 1989*.

6.1.3 If the Special Rate is declared CSTA 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:

6.1.5 CSTA 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.

6.1.6 CSTA must be an incorporated entity through the life of the Special Rate and must act in accordance with the Associations Incorporation Reform Act 2012.



- 6.1.7 CSTA will be required to develop and adopt their five-year Business Plan to guide expenditure of the funds.
- 6.1.8 CSTA will be required to develop an annual Budget and Action Plan that details how the operating budget will be spent.
- 6.1.9 CSTA 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 *Local Government Act 1989* enables Council to discontinue the Special Rate if there is any inappropriate expenditure.
- 6.1.10 If Council does not wish to support the Carlisle Street Special Rate, there may be an expectation from the commercial precinct that Council will fund marketing and promotion activities for the precinct.
- 6.1.11 If Council proceeds with the declaration at its Ordinary Meeting on 17 May 2023, a person then has 30 days from the date of issue of the Special Rate notice to apply to VCAT for a review of a decision of Council to impose a Special Rate on limited grounds under s185 the *Local Government Act 1989*.
- 6.1.12 If an appeal is lodged at VCAT, Council would consider whether to proceed with the implementation of any Special Rate where there is a VCAT appeal lodged until this appeal has been heard, and whether to provide any monies raised to CSTA until there is a VCAT decision on the matter.

7. FINANCIAL IMPACT

- 7.1 Council incurs administrative costs for the introduction of the Carlisle Street 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 CSTA in two half-yearly instalments after they complete reporting requirements under the proposed funding agreement.

8. ENVIRONMENTAL IMPACT

- 8.1 A financially sustainable Business 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

11.1.1 Council considers Submissions and Objections at its Ordinary Council Meeting on 19 April 2023.

11.1.2 Council considers whether to declare (or not) the Carlisle Street Special Rate 2023-2028 at its Ordinary Council Meeting on 17 May 2023.

11.1.3 Council advises the Carlisle Street Traders Association of the Council decision on 18 May 2023.

11.1.4 Council advises rate payers, by letter sent to the nominated postal address and the street address in the designated Special Rate area of the decision regarding



the Carlisle Street Special Rate following the decision at the Ordinary Council Meeting on 17 May 2023.

11.1.5 If the decision is to declare:

the Carlisle Street Special Rate commences on 1 July 2023; and

once the Special Rate is imposed on affected properties under 2023/24 rate notices, there will be a statutory opportunity of 30 days for lodging appeals with VCAT against Council's declaration of the Special Rate.

11.2 COMMUNICATION

11.2.1 Council advises the Carlisle Street Traders Association of Council's decision regarding the Carlisle Street Special Rate.

11.2.2 Council advises, by letter, all the eligible rate payers nominated postal addresses and the street addresses in the designated Special Rate area of the decision regarding the Carlisle Street Special Rate following the decision at 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. **Submissions and Objections Summary** [↓](#)
2. **Proposed Carlisle Street Rate Boundary Map and Property List** [↓](#)
3. **Confidential- Submissions from Property and Business Owners**