

Attachment 1: Process and procedure for Eltham Town Special Rate Declaration

That Council:

- 1. The criteria which form the basis of the declaration of the Special Rate are the ownership and the capital improved value of rateable land used, or reasonably capable of being used, for commercial, retail or professional purposes, which rateable land is situated within the geographical area in which the properties described in paragraphs 6 and 7 of this declaration are included.**
- 2. In declaring the Special Rate, Council is performing functions and exercising powers in relation to the peace, order and good government of the municipal district of the Shire of Nillumbik, in particular the encouragement of commerce, retail activity and employment opportunities within the area for which the Special Rate is declared.**
- 3. The total cost of the performance of the function and the exercise of the power by Council (in relation to activities associated with the encouragement of commerce, retail activity and employment opportunities in the area for which the Special Rate is declared), and also the total amount of the Special Rate to be levied by Council is referable to an amount of \$130,000, which amount will be levied in each year of the scheme and which in total will raise an amount of \$650,000 over the five year period of the scheme.**
- 4. The period for which the Special Rate is declared and will remain in force is a period of five years commencing on 1 July 2016 and ending on 30 June 2021.**
- 5. The area for which the Special Rate is declared is all of the land referred to as the Eltham Town centre, as identified and shown on the plan set out in the attachment forming a part of this declaration (being Attachment 3).**
- 6. The land in relation to which the Special Rate is declared is all that rateable land described in the listing of rateable properties set out in the attachment forming a part of this declaration (being Attachment 4).**
- 7. The Special Rate will be declared and assessed in accordance with the amounts set out alongside each property in the attachment forming a part of this declaration (being Attachment 4), such amounts having respectively been assessed by multiplying the capital improved value of each property which are liable to pay the Special Rate.**
- 8. The Special Rate will be levied by sending a notice of levy in the prescribed form to the person who is liable to pay the Special Rate, which will require that the Special Rate must be paid by four instalments, to be paid by the dates which are fixed by Council in the notice.**
- 9. Council will consider cases of financial and other hardship and may reconsider other payment options for the Special Rate.**
- 10. No incentives will be given for payment of the Special Rate before the due date for payment.**

- 11. Council considers that there will be a special benefit to the persons required to pay the Special Rate because there will be a benefit to those persons that is over and above, or greater than, the benefit that is available to persons who are not subject to the Special Rate, and directly and indirectly as a result of the expenditure of the Special Rate the viability of the Eltham Town centre as a business, commercial and retail area, and the value and the use, occupation and enjoyment of the properties and the businesses included in the Special Rate scheme area will be maintained or enhanced through increased economic activity.**
- 12. For the purposes of having determined the total amount of the Special Rate to be levied under the scheme, Council further considers and formally determines for the purposes of sections 163(2)(a), (2A) and (2B) of the Act that the estimated proportion of the total benefits of the scheme to which the performance of the function and the exercise of the power relates (including all special benefits and community benefits) that will accrue as special benefits to all of the persons who are liable to pay the Special Rate is in a ratio of 1:1 (or 100%). This is on the basis that, in the opinion of the Council, all of the services and activities to be provided from the expenditure of the Special Rate are marketing, promotion and advertising related and will accordingly only benefit those properties and businesses included in the scheme that are used, or reasonably capable of being used, for retail, commercial or professional purposes.**
- 13. The Eltham Chamber of Commerce and Industry be authorised to administer the proceeds of the Special Rate on the express condition that the Chamber enters into funding agreement with Council for the period of the Special Rate (being Attachment 5).**
- 14. Council's General Manager Environment and Planning, or the person for the time being acting in that position, for the purposes of paragraph 14 of this resolution, be authorised to sign the funding agreement between Council and the Chamber 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 Chamber, 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 Local Government Act 1989 to do so, and such funding agreement to be submitted to Council for sealing.**
- 15. Council encourages the Eltham Chamber of Commerce and Industry to refine the marketing and promotion plan that responds to the specific needs of the businesses in various areas across the centre.**

NOTICE OF INTENTION TO DECLARE A SPECIAL RATE SCHEME FOR ELTHAM TOWN

In accordance with a resolution of the Nillumbik Shire Council (Council) made at its Ordinary meeting held on **22 March 2016**, notice is given that at Council Ordinary meeting to be held on **21 June 2016**, it is the intention of the Council to declare a Special Rate Scheme (*Special Rate*) under Section 163(1) of the *Local Government Act 1989 (Act)* for the purposes of defraying expenses to be incurred by the Council in, administratively only and subject always to the approval, direction and control of the Council, providing funds to the incorporated body known and operating as Eltham Chamber of Commerce and Industry Inc. (*Chamber*) to be used for the purposes of funding a centre coordinator, promotional, advertising, marketing, business development and other incidental expenses to be approved by the Council and agreed to from time to time between the Council and the Chamber, all of which are associated with the encouragement of commerce, retail and professional activity and employment in the Eltham Town commercial business centre (*Precinct*).

The Special Rate will be based on geographic criteria, having regard to the location and the capital improved value of those rateable properties within the Precinct that are used, or reasonably capable of being used, for commercial, retail or professional purposes.

The Council considers that each rateable property and each business included in the Scheme area that is required to pay the Special Rate will receive a special benefit because the viability of the Precinct as a commercial, retail and professional area will be enhanced through increased economic activity.

In performing functions and exercising powers in relation to activities associated with the encouragement of commerce and retail activity in and around the area for which it is proposed the Special Rate will be declared, the Council intends to levy and spend an amount of \$130,000 for the first year of the Scheme; raising in total an amount of \$650,000 over the five year period of the Scheme.

The Special Rate is to be declared, and will remain in force for the period commencing on **1 July 2016** and ending on **30 June 2021**.

The following land is specified as the land to be covered by the Special Rate Scheme: Properties located in the core retail and commercial business precinct comprising all properties covered by the current Scheme including Main Road, Dudley Street, Arthur Street, Pryor Street and Luck Street in Eltham.

For the period of the Special Rate Scheme, the Special Rate will be assessed based on the ownership of rateable land used or zoned for commercial, retail or professional purposes located within the Precinct. The Special Rate is calculated by reference to the Capital Improved Value (*CIV*) of each property included in the Scheme, in a similar manner to the calculation of the general rate.

The Special Rate will be levied by the Council sending a notice of levy quarterly to the persons who are liable to pay the Special Rate, which will require that the Special Rate must be paid by four instalments by the due date fixed by Council in the notice.

Council will consider cases of financial and other hardship and may reconsider other payment options for the Special Rate. There will be no incentives given for payment of the Special Rate before the due dates for payment.

For the purposes of having determined the total amount of the Special Rate to be levied under the Scheme, Council considers and formally determines for the purposes of sections 163(2)(a), (2A) and (2B) of the Act that the estimated proportion of the total benefits of the Scheme to which the performance of the function and the exercise of the power relates (including all special benefits and community benefits) that will accrue as special benefits to all of the persons who are liable to pay the Special Rate is in a ratio of 1:1 (or 100%). This is on the basis that, in the opinion of the Council, all of the services and activities to be provided from the proceeds of

the expenditure of the Special Rate are marketing, promotion and advertising related and will accordingly only benefit those properties and businesses included in the Scheme that are used, or reasonably capable of being used, for retail, commercial or professional purposes.

Copies of the proposed declaration of the Special Rate and a detailed plan of the Scheme area (including a list of all properties included in the Scheme, with the estimated amounts payable by each property based on the 2014 CIV valuation) are available for inspection during normal office hours at the Council offices in Greensborough for a period of at least 28 days after the date of the publication of this notice, being until Monday, **25 April 2016**.

Any person may make a written submission to the Council under sections 163A and 223 of the Act.

In addition, any person who will be required to pay the Special Rate to be imposed by the proposed declaration, whether an owner or an occupier of a property included in the Scheme, has a right to object to the proposed declaration and may also make a written objection to the Council under section 163B of the Act. An occupier is entitled to exercise the right of objection if they submit documentary evidence with the objection which shows that it is a condition of the lease under which the person is an occupier that the occupier is to pay the Special Rate.

Written submissions to be submitted to the Council under section 223 of the Act and/or written objections to be lodged with the Council under section 163B of the Act must be received by Council by 5PM on Friday, **29 April 2016**. Submissions and/or objections must be in writing and addressed and sent by mail to the Chief Executive Officer, Nillumbik Shire Council, PO Box 476, Greensborough 3088.

Any person who has made a written submission under section 223 of the Act and has requested to be heard in support of their written submission is entitled to appear in person or to be represented by a person specified in the submission before a Committee appointed by the Council to hear submissions under section 223 of the Act, meeting to be held on **7 June 2016**, time and place of which will be advised in writing.

Any person making a written submission under section 223 of the Act is advised that the Council is no longer required to make available for public inspection submissions received in accordance with section 223 of the Act. Accordingly, all submissions and personal information in submissions will be handled as authorised or required by law, including under the *Privacy and Data Protection Act 2014*.

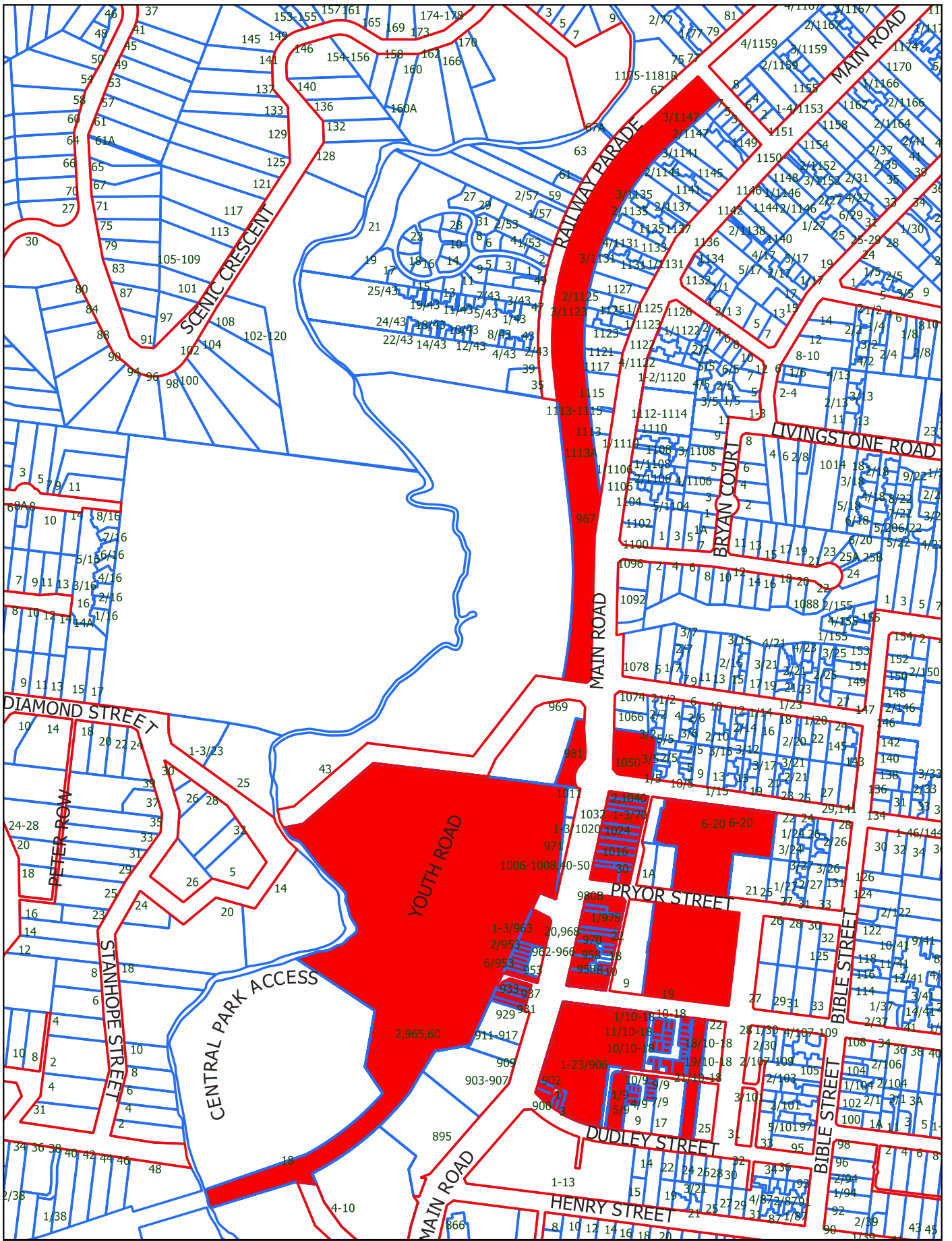
Council will consider any written submissions and take into account any objections in accordance with sections 163A, 163B and 223 of the Act.

Any person requiring further information concerning the proposed declaration of Special Rate should in the first instance contact Council's Strategic and Economic Planning Unit on 9433 3111 or email darko.popovski@nillumbik.vic.gov.au .

STUART BURDACK

CHIEF EXECUTIVE OFFICER

NILLUMBIK SHIRE COUNCIL



- Special Rate
- Property Boundary
- Road Boundary

**Eltham Town
Special Rate Renewal**

NSCIT-11164



Assessment	Formatted Address	Ratetype	Status	Rating Period	Rateable Value	Rate = \$130,000
276	1/10-18 Arthur Street	11	Current	2015/2016	CIV	1,170.04
278	5/10-18 Arthur Street	11	Current	2015/2016	CIV	288.01
279	6/10-18 Arthur Street	11	Current	2015/2016	CIV	288.01
280	7/10-18 Arthur Street	11	Current	2015/2016	CIV	243.01
281	8/10-18 Arthur Street	11	Current	2015/2016	CIV	216.01
282	9/10-18 Arthur Street	11	Current	2015/2016	CIV	333.01
283	10/10-18 Arthur Street	11	Current	2015/2016	CIV	432.02
284	11/10-18 Arthur Street	11	Current	2015/2016	CIV	387.01
285	13/10-18 Arthur Street	11	Current	2015/2016	CIV	270.01
286	14/10-18 Arthur Street	11	Current	2015/2016	CIV	288.01
287	15/10-18 Arthur Street	11	Current	2015/2016	CIV	279.01
288	16/10-18 Arthur Street	11	Current	2015/2016	CIV	306.01
289	17/10-18 Arthur Street	11	Current	2015/2016	CIV	279.01
290	18/10-18 Arthur Street	11	Current	2015/2016	CIV	198.01
291	19/10-18 Arthur Street	11	Current	2015/2016	CIV	180.01
292	20/10-18 Arthur Street	11	Current	2015/2016	CIV	162.01
293	21/10-18 Arthur Street	11	Current	2015/2016	CIV	648.02
294	22/10-18 Arthur Street	11	Current	2015/2016	CIV	504.02
1586	8 Commercial Place	11	Current	2015/2016	CIV	684.03
1587	10 Commercial Place	11	Current	2015/2016	CIV	657.02
1588	16 Commercial Place	11	Current	2015/2016	CIV	585.02
1589	18 Commercial Place	11	Current	2015/2016	CIV	702.03
1591	22 Commercial Place	11	Current	2015/2016	CIV	477.02
1593	50 Commercial Place	11	Current	2015/2016	CIV	594.02
1594	1/70 Commercial Place	11	Current	2015/2016	CIV	2,160.08
1595	2/70 Commercial Place	11	Current	2015/2016	CIV	405.02
1596	3/70 Commercial Place	11	Current	2015/2016	CIV	306.01
1597	80 Commercial Place	11	Current	2015/2016	CIV	756.03
1989	1 Dudley Street	11	Current	2015/2016	CIV	360.01
1990	3 Dudley Street	11	Current	2015/2016	CIV	414.02
1992	1/9 Dudley Street	11	Current	2015/2016	CIV	211.51
1993	2/9 Dudley Street	11	Current	2015/2016	CIV	207.01
1994	3/9 Dudley Street	11	Current	2015/2016	CIV	172.81
1995	4/9 Dudley Street	11	Current	2015/2016	CIV	387.01
1996	5/9 Dudley Street	11	Current	2015/2016	CIV	387.01
1997	6/9 Dudley Street	11	Current	2015/2016	CIV	342.01
1998	7/9 Dudley Street	11	Current	2015/2016	CIV	342.01
1999	8/9 Dudley Street	11	Current	2015/2016	CIV	342.01
2000	9/9 Dudley Street	11	Current	2015/2016	CIV	342.01
2001	10/9 Dudley Street	11	Current	2015/2016	CIV	342.01
2004	2/23 Dudley Street	11	Current	2015/2016	CIV	297.01
2005	3/23 Dudley Street	11	Current	2015/2016	CIV	297.01
2006	4/23 Dudley Street	11	Current	2015/2016	CIV	243.01
2007	5/23 Dudley Street	11	Current	2015/2016	CIV	297.01
2008	6-7/23 Dudley Street	11	Current	2015/2016	CIV	369.01
2010	9/23 Dudley Street	11	Current	2015/2016	CIV	156.61
2011	10/23 Dudley Street	11	Current	2015/2016	CIV	174.61
2012	11/23 Dudley Street	11	Current	2015/2016	CIV	174.61
3791	929 Main Road	11	Current	2015/2016	CIV	621.02
3792	931 Main Road	11	Current	2015/2016	CIV	945.04
3793	933 Main Road	11	Current	2015/2016	CIV	621.02
3794	935 Main Road	11	Current	2015/2016	CIV	639.02
3795	937 Main Road	11	Current	2015/2016	CIV	522.02
3796	937A Main Road	11	Current	2015/2016	CIV	252.01
3798	6/953 Main Road	11	Current	2015/2016	CIV	549.02
3799	5/953 Main Road	11	Current	2015/2016	CIV	531.02

3800	4/953 Main Road	11	Current	2015/2016	CIV	513.02
3801	3/953 Main Road	11	Current	2015/2016	CIV	486.02
3802	2/953 Main Road	11	Current	2015/2016	CIV	468.02
3803	1/953 Main Road	11	Current	2015/2016	CIV	495.02
3805	965 Main Road	11	Current	2015/2016	CIV	450.02
3806	967 Main Road	11	Current	2015/2016	CIV	207.01
3810	981 Main Road	11	Current	2015/2016	CIV	1,935.07
3969	902 Main Road	11	Current	2015/2016	CIV	603.02
3986	1/950 Main Road	11	Current	2015/2016	CIV	1,575.06
3987	8/950 Main Road	11	Current	2015/2016	CIV	495.02
3988	9/950 Main Road	11	Current	2015/2016	CIV	234.01
3989	10/950 Main Road	11	Current	2015/2016	CIV	315.01
3990	2/950 Main Road	11	Current	2015/2016	CIV	540.02
3991	3/950 Main Road	11	Current	2015/2016	CIV	549.02
3992	4/950 Main Road	11	Current	2015/2016	CIV	747.03
3993	5/950 Main Road	11	Current	2015/2016	CIV	351.01
3994	6/950 Main Road	11	Current	2015/2016	CIV	486.02
3995	7/950 Main Road	11	Current	2015/2016	CIV	468.02
3996	958 Main Road	11	Current	2015/2016	CIV	1,566.06
3997	962 Main Road	11	Current	2015/2016	CIV	1,080.04
3998	964 Main Road	11	Current	2015/2016	CIV	1,395.05
3999	966 Main Road	11	Current	2015/2016	CIV	351.01
4001	970 Main Road	11	Current	2015/2016	CIV	900.03
4002	976 Main Road	11	Current	2015/2016	CIV	891.03
4003	1/972 Main Road	11	Current	2015/2016	CIV	261.01
4004	2/972 Main Road	11	Current	2015/2016	CIV	261.01
4005	6/972 Main Road	11	Current	2015/2016	CIV	549.02
4006	5/972 Main Road	11	Current	2015/2016	CIV	234.01
4007	4/972 Main Road	11	Current	2015/2016	CIV	270.01
4008	3/972 Main Road	11	Current	2015/2016	CIV	288.01
4009	972 Main Road	11	Current	2015/2016	CIV	558.02
4010	1-2/972 Main Road	11	Current	2015/2016	CIV	288.01
4011	3-8/972 Main Road	11	Current	2015/2016	CIV	387.01
4012	9-13/972 Main Road	11	Current	2015/2016	CIV	774.03
4019	1012 Main Road	11	Current	2015/2016	CIV	2,340.09
4020	1016 Main Road	11	Current	2015/2016	CIV	549.02
4021	1/1020 Main Road	11	Current	2015/2016	CIV	837.03
4022	2/1020 Main Road	11	Current	2015/2016	CIV	261.01
4023	3/1020 Main Road	11	Current	2015/2016	CIV	324.01
4024	2/1020 Main Road	11	Current	2015/2016	CIV	288.01
4025	3/1020 Main Road	11	Current	2015/2016	CIV	225.01
4027	1024 Main Road	11	Current	2015/2016	CIV	675.03
4028	1026 Main Road	11	Current	2015/2016	CIV	423.02
4029	1030 Main Road	11	Current	2015/2016	CIV	684.03
4030	1032 Main Road	11	Current	2015/2016	CIV	783.03
4031	1034 Main Road	11	Current	2015/2016	CIV	675.03
4032	1036 Main Road	11	Current	2015/2016	CIV	990.04
4033	1040 Main Road	11	Current	2015/2016	CIV	693.03
21825	20 Commercial Place	11	Current	2015/2016	CIV	693.03
21826	968 Main Road	11	Current	2015/2016	CIV	1,620.06
21926	1/906 Main Road	11	Current	2015/2016	CIV	10,817.51
21927	2/906 Main Road	11	Current	2015/2016	CIV	848.73
21928	3/906 Main Road	11	Current	2015/2016	CIV	274.51
21929	4/906 Main Road	11	Current	2015/2016	CIV	738.03
21930	5/906 Main Road	11	Current	2015/2016	CIV	1,057.54
21931	6/906 Main Road	11	Current	2015/2016	CIV	472.52
21932	7/906 Main Road	11	Current	2015/2016	CIV	643.52
21934	22/906 Main Road	11	Current	2015/2016	CIV	574.22

21935	10/906 Main Road	11	Current	2015/2016	CIV	1,361.75
21936	11/906 Main Road	11	Current	2015/2016	CIV	634.52
21937	12/906 Main Road	11	Current	2015/2016	CIV	295.21
21938	13/906 Main Road	11	Current	2015/2016	CIV	732.63
21939	14/906 Main Road	11	Current	2015/2016	CIV	475.22
21940	15/906 Main Road	11	Current	2015/2016	CIV	458.12
21941	16/906 Main Road	11	Current	2015/2016	CIV	701.13
21942	17/906 Main Road	11	Current	2015/2016	CIV	407.72
21943	18/906 Main Road	11	Current	2015/2016	CIV	894.63
21944	23/906 Main Road	11	Current	2015/2016	CIV	616.52
21945	20/906 Main Road	11	Current	2015/2016	CIV	851.43
21946	21/906 Main Road	11	Current	2015/2016	CIV	718.23
21947	9A/906 Main Road	11	Current	2015/2016	CIV	256.51
21948	2A/906 Main Road	11	Current	2015/2016	CIV	378.01
21959	1008 Main Road	11	Current	2015/2016	CIV	747.03
22187	19 Arthur Street	11	Current	2015/2016	CIV	9,945.37
22190	8A/23 Dudley Street	11	Current	2015/2016	CIV	107.10
22191	8B/23 Dudley Street	11	Current	2015/2016	CIV	107.10
22405	1004 Main Road	11	Current	2015/2016	CIV	738.03
22406	30 Commercial Place	11	Current	2015/2016	CIV	621.02
22479	1000 Main Road	11	Current	2015/2016	CIV	2,250.08
22487	1/1 Pryor Street	11	Current	2015/2016	CIV	1,305.05
22568	1006 Main Road	11	Current	2015/2016	CIV	945.04
22569	40 Commercial Place	11	Current	2015/2016	CIV	594.02
23411	2A Luck Street	11	Current	2015/2016	CIV	342.01
23412	2B Luck Street	11	Current	2015/2016	CIV	360.01
23427	2/1 Pryor Street	11	Current	2015/2016	CIV	783.03
23555	1050 Main Road	11	Current	2015/2016	CIV	1,980.07
23556	1050A Main Road	11	Current	2015/2016	CIV	297.01
24679	3/10-18 Arthur Street	11	Current	2015/2016	CIV	279.01
24680	4/10-18 Arthur Street	11	Current	2015/2016	CIV	270.01
24712	1/20 Arthur Street	11	Current	2015/2016	CIV	711.03
24713	2/20 Arthur Street	11	Current	2015/2016	CIV	711.03
24714	3/20 Arthur Street	11	Current	2015/2016	CIV	711.03
24715	4/20 Arthur Street	11	Current	2015/2016	CIV	711.03
24718	2 Pryor Street	11	Current	2015/2016	CIV	774.03
24812	8/906 Main Road	11	Current	2015/2016	CIV	592.22
24813	9/906 Main Road	11	Current	2015/2016	CIV	462.62
25299	24/10-18 Arthur Street	11	Current	2015/2016	CIV	459.02
25300	25/10-18 Arthur Street	11	Current	2015/2016	CIV	252.01
25745	1/963 Main Road	11	Current	2015/2016	CIV	1,035.04
25746	2/963 Main Road	11	Current	2015/2016	CIV	1,395.05
25747	3/963 Main Road	11	Current	2015/2016	CIV	846.03
26498	978 Main Road	11	Current	2015/2016	CIV	711.03
26499	1/978 Main Road	11	Current	2015/2016	CIV	207.01
26500	1A/978 Main Road	11	Current	2015/2016	CIV	147.61
27450	2/951 Main Road	11	Current	2015/2016	CIV	801.03
27451	1/951 Main Road	11	Current	2015/2016	CIV	1,080.04
27616	1/6-20 Luck Street	11	Current	2015/2016	CIV	900.03
27617	2/6-20 Luck Street	11	Current	2015/2016	CIV	702.03
27618	3/6-20 Luck Street	11	Current	2015/2016	CIV	1,305.05
27619	4/6-20 Luck Street	11	Current	2015/2016	CIV	1,305.05
27620	5/6-20 Luck Street	11	Current	2015/2016	CIV	2,497.59
27621	6/6-20 Luck Street	11	Current	2015/2016	CIV	3,285.12
28734	900 Main Road	11	Current	2015/2016	CIV	873.03
28890	1/1004 Main Road	11	Current	2015/2016	CIV	324.01
28920	26 Commercial Place	11	Current	2015/2016	CIV	1,260.05
28921	1/6 Pryor Street	11	Current	2015/2016	CIV	873.03

29384	980 Main Road	11	Current	2015/2016	CIV	1,350.05
21858	1/ 23 Dudley Street	11	Current	2015/2016	CIV	297.01
21859	12/ 23 Dudley Street	11	Current	2015/2016	CIV	174.63
						130,000.00

Draft Marketing and Promotional Special Rate Administrative Payment Agreement

This Agreement is made between

Nillumbik Shire Council

PO Box 476 Greensborough VIC 3088

and

Eltham Chamber of Commerce and Industry

PO Box 3023 Eltham VIC 3023

For the period

1 July 2016 to 30 June 2021

Introduction

- A** In June 2016, the Nillumbik Shire Council declared a Special Rate under section 163(1) of the *Local Government Act 1989* for the purposes of defraying promotional, advertising, marketing, business development and other incidental expenses associated with the encouragement of commerce and retail and professional activity and employment in the Eltham Town Centre.
- B** The Council has, following the declaration of the Special Rate, resolved to appoint the Eltham Chamber of Commerce and Industry to be the agent of the Council in order to administer the expenditure of the proceeds raised by the Special Rate for the purposes generally specified in Clause A, and including other additional in-kind contributions to the scheme made by the Council, always for, and subject to, the purposes first approved by the Council, and otherwise in accordance with this Agreement.
- C** The Chamber has agreed to work with the Council as its administrative agent and to do all things necessary in connection with the matters specified in Clause B and the Chamber expressly acknowledges that in its capacity under this Agreement and otherwise it is, and at all times will be, acting in an administrative capacity only and that in relation to the Special Rate and its expenditure, the Council is, and remains, solely responsible for ensuring that the money from the Special Rate is used only for the purposes for which the Council has declared the Special Rate.
- D** This Agreement sets out the basis on which the Council has agreed to appoint the Chamber to act on behalf of the Council as its administrative agent for the purposes of administering the expenditure of the Special Rate.

Definitions

In this Agreement, unless the contrary intention appears –

Act means the *Local Government Act 1989* (Vic);

Agreement means this agreement;

Annual General Meeting means the annual general meeting of the Chamber;

Business Day means any day that is not a Saturday, Sunday or gazetted public holiday in the State of Victoria;

Centre Business Plan means the 5 year strategic business and development plan of the Centre as has been previously noted by the Council at the time of declaring the Special Rate, or at any other relevant time;

Clause means a clause of this Agreement and sub-clause has a corresponding meaning;

Council means the Nillumbik Shire Council and includes any successor of that Council and, where consistent with the context, includes the Council's employees and agents;

Centre means the Eltham Town Centre;

Chamber means the Eltham Chamber of Commerce and Industry and, where consistent with the context, includes the Chamber's employees and agents;

Chamber Annual Budget means the budget prepared by the Chamber for the relevant 12-month period, being the budget that the Chamber proposes to adopt at its Annual General Meeting;

Chamber Business Plan means the business plan of the Centre prepared by the Chamber for the relevant 12-month period;

Fund means the proceeds of the Special Rate which, administratively only and subject always to the unfettered direction, control and approval of the Council, is or may from time to time be paid by the Council to the Chamber in accordance with the terms of this Agreement, and includes the additional in-kind contributions to the scheme made by the Council to the Chamber;

GST means GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (C'th) as amended;

Intellectual Property means any property resulting from the application of one's mind or intellect by which something new or original is created including, but not limited to, any trademark, copyright, artistic design, logo or brand name;

Schedule means the schedule to this agreement which sets out the statutory requirements of the Council pursuant to the Act and the legal requirements of the Council at common law respectively both in relation to the use of the proceeds of the Special Rate and the requirement for the Council to ensure that the Chamber acts as an agent for and on behalf of the Council administratively only, with the Council maintaining full and unfettered responsibility for the approval, direction and control of the expenditure of the proceeds of the Special Rate;

Special Rate means the special rate referred to in Clause A; and

Tax Invoice has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (C'th) as amended.

1. Policy Context

It is the Council's aim to support and develop a sustainable and vibrant local economy and environment, one which attracts investment and other opportunities for the benefit of the business and the community. One of the ways in which the Council does this is through the development and support of partnerships, alliances and other relationships with local organisations and business groups established for the improvement and promotion of a shopping precinct or commercial area.

2. Council's Obligations

2.1 Subject always to (and expressly not otherwise) –

2.1.1 the requirements of the Act and any other appropriate law (such requirements being set out in the Schedule) and the terms of this Agreement;

2.1.2 the Chamber, at all relevant times, being and maintaining its legal status as an association incorporated under and pursuant to the *Associations Incorporations Act 1981*; and

2.1.3 the Chamber complying with all of its obligations under this Agreement

–

the Council agrees that in each year during which the Special Rate remains in force the Council will –

- 2.1.4 levy the Special Rate on those persons who, under the Act, are liable to pay the Special Rate;
 - 2.1.5 collect, and if necessary, enforce the payment of the Special Rate; and
 - 2.1.6 pay to the Chamber (administratively only and in circumstances where the Council has first authorised the expenditure for which it is, or has been proposed, the Chamber will expend the proceeds of the Special Rate) the proceeds of the Special Rate in two [2] equal instalments each year commencing on 1 July.
- 2.2 Council agrees to pay the proceeds of the Special Rate to the Chamber by the last day of the month in which the payment becomes payable.
 - 2.3 Notwithstanding sub-clause 2.1.6, the Council may agree to a request by the Chamber to pay the Special Rate proceeds in two [2] unequal instalments on the basis that the request is supported by the Council approved Chamber Annual Budget and the Chamber Business Plan.
 - 2.4 Council agrees to make additional in-kind contributions to the scheme of approximately \$15,000 per scheme renewal, with ongoing yearly contributions of approximately \$10,000.
 - 2.5 Where the approval and authority of the Council is first required in accordance with this Agreement, the Council will endeavour to provide a timely response to the Chamber within five [5] Business Days. In the event that the Council requires more time in order to respond to the Chamber's request in relation to the proposed expenditure of the Special Rate, whether in relation to the Council's assessment of documentation provided by the Chamber or otherwise, the Council will notify the Chamber of this and the estimated time required for the Council to deliver its response.
 - 2.6 In the event that the Council conducts supplementary valuations that result in additional amounts being collected as Special Rate proceeds, the Council and the Chamber agree that the additional proceeds will be carried forward by the Council and provided to the Chamber in the following financial year, except in the final year of the Special Rate term, where all additional amounts will be forwarded to the Chamber and expended by the end of the Special Rate term.
 - 2.7 Council agrees to provide an annual governance training program for the Chamber committee members, generally on behalf of all associations and groups within the municipality. The cost of the annual governance training program will be shared between Council and the participating associations, with financial contributions being required from each association.
 - 2.8 Council agrees, separately, to assist the Chamber by providing a selection of accredited and recommended consultants in order to assist the Chamber to select a consultant to prepare the Chamber Business Plan.

3. Relationship between the Council and the Chamber

- 3.1 The Council and the Chamber expressly acknowledge, and as a condition of the Council complying with its obligation under Clause 2.1, and otherwise at all times consistent with the Centre Business Plan, that –
 - 3.1.1 at all times and for all purposes relevant to the application of the proceeds of the Special Rate and the Fund, the relationship between the Council and the Chamber is one of principal and agent ((where, as principal, the Council is responsible for ensuring that

- the money from the Special Rate is used only for the purpose for which the Special Rate was declared and levied) and the Chamber (as an administrative agent acting for and on behalf of the Council and under its direction and control) is responsible for expending the proceeds of the Special Rate and the Fund in accordance with the direction, control and approval of the Council, and not otherwise));
- 3.1.2 the Council, or the member of the Council's staff acting under delegation or authorisation must, prior to paying the proceeds of the Special Rate or the Fund, or any part of it, to the Chamber first approve the proposed expenditure and activities of the Chamber, having regard at all times to the purposes for which the Special Rate has been declared and levied by Council, including to ensure compliance by the Council with the requirements of section 163(6) of the Act and otherwise according to law (being set out in the Schedule);
- 3.1.3 the role of the Chamber in expending the proceeds of the Special Rate and the Fund paid to it by the Council is expressly acknowledged to be at all times on behalf of the Council and of an administrative nature only. In particular, it is expressly acknowledged that the Chamber retains no independent discretion to make any decisions in relation to the expenditure of the proceeds of the Special Rate or the Fund, with all such decisions, in accordance with this Agreement, first requiring the authority and approval of the Council;
- 3.1.4 the Chamber must ensure that the payments made to it by the Council are used as follows –
- 3.1.4.1 with respect to the proceeds of the Special Rate, only for the purposes for which the Special Rate has been declared and levied by the Council and prescribed in this Agreement, and which have otherwise been approved by the Council; and
- 3.1.4.2 with respect to the additional in-kind contributions to the scheme made by the Council to the Chamber, only for the purposes which have been approved by the Council.
- 3.1.5 the Council, at all times throughout this Agreement and otherwise, reserves and retains to itself all powers, functions, discretions and duties relevant to the application of the proceeds of the Special Rate and the Fund, and the provisions of this Agreement must be read accordingly;
- 3.1.6 the Chamber must at all times in relation to the matters relevant to the Special Rate and the Fund, including the expenditure of the Special Rate and the Fund, act by, under and in accordance with the direction, control and absolute authority of the Council, always on behalf of the Council in an administrative capacity only; and
- 3.1.7 without limiting sub-clause 3.1.6, the Chamber acknowledges as an express obligation under this Agreement (and undertakes to the Council) that it will not use, apply or expend the proceeds of the Special Rate and the Fund, or any part of it, for any unauthorised purposes, including without limitation the making of any political donations.
- 3.2 Save only for the matters and requirements set out in Clause 3.1 in relation to the expenditure of the Special Rate and the Fund, the Council acknowledges that, in all other respects, the Chamber is to be, and will

remain, an autonomous and independent body, which is not in any way accountable to the Council or to any member of the Council's staff.

- 3.3 Without limiting the generality of Clause 3.2, the Council is not required to approve any part of the Chamber Annual Budget or the Chamber Business Plan which does not relate to the expenditure of the Special Rate or the Fund.

4. The Chamber's Obligations

- 4.1 The Chamber must prepare and submit for the approval of the Council, or its delegate, before the first [1] day of each new financial year –
- 4.1.1 the Chamber Annual Budget that details the manner in which the Chamber proposes to spend the Special Rate and the Fund in the upcoming financial year; and
 - 4.1.2 the Chamber Business Plan, as it relates to and as it is necessary to identify key activities and expenditure items in relation to the Special Rate and the Fund. The Chamber Business Plan must be funded from sources other than the Special Rate or the Fund.
- 4.2 Subject to the Council, or its delegate, first approving the Chamber Annual Budget and the Chamber Business Plan as it relates to the expenditure of the Special Rate and the Fund (and always having regard to the Centre Business Plan which has previously been noted by the Council), the Chamber must use the Special Rate and the Fund only for the purposes which have been approved by the Council, as otherwise set out in the Centre Business Plan, the Chamber Annual Budget and the Chamber Business Plan. It is generally understood by the parties, but subject to specific approval by the Council, that the purposes for which the Special Rate and the Fund may be expended include –
- 4.2.1 media advertising;
 - 4.2.2 promotions;
 - 4.2.3 performances and exhibitions;
 - 4.2.4 business networking;
 - 4.2.5 public events;
 - 4.2.6 decorations;
 - 4.2.7 direct mail;
 - 4.2.8 online media;
 - 4.2.9 publications;
 - 4.2.10 the engagement of a Centre marketing officer/ coordinator; and
 - 4.2.11 the provision of in-centre communications.
- 4.3 The Chamber must obtain the separate and further prior written consent of the Council to spend the Special Rate or the Fund, or any part of it, arising from any significant changes to a Council approved Chamber Annual Budget or Chamber Business Plan.
- 4.4 In each financial year during which the Special Rate remains in force, the Chamber must attempt to expend the whole of the proceeds of the Special Rate paid to it by the Council, in accordance with the Chamber Annual Budget and the Chamber Business Plan and those purposes which have been approved by Council.
- 4.5 Despite Clause 4.4, the Council may in special circumstances allow the Chamber to withhold the expenditure of a part or parts of the Special Rate or the Fund, and to carry those monies forward as a proposed expenditure item for the following year, and the next Chamber Annual Budget must incorporate such expenditure as a carried forward item.

- 4.6 Unless otherwise agreed to or directed by the Council, the Chamber agrees to appoint, as its consultant, a Centre Marketing Officer/ Coordinator upon suitable terms and conditions.
- 4.7 The Chamber agrees to provide to the Council a Tax Invoice for the amount payable with the specified GST amount by the first [1] working day of the month in which a Special Rate payment under this Agreement becomes due and payable by the Council to the Chamber.
- 4.8 The Chamber must obtain the prior written consent of the Council before entering into any agreement with any third party, whether written or oral, requiring any ongoing payments of the Special Rate proceeds.
- 4.9 The Chamber agrees that the Chamber (and not the Council) will be liable for any debt or expense incurred by the Chamber over and above the amounts set out in the Council approved Chamber Annual Budget.
- 4.10 Where the Chamber Annual Budget specifies amounts in excess of the Special Rate proceeds for that financial year, the Chamber must inform the Council in writing of the source of the additional funding.
- 4.11 The Chamber agrees to develop a process mechanism to monitor the performance of the Centre in relation to the expenditure of the Special Rate and the Fund through a review process that will involve a survey of all rateable business and property owners every year that the Special Rate remains in force. The cost of the review must be funded from sources other than the Special Rate or the Fund.
- 4.12 The Chamber agrees to conduct an overall review of the Special Rate in a timely manner, no later than six [6] months before the Special Rate term is due to end. The cost of the review must be funded from sources other than the Special Rate or the Fund.
- 4.13 The Chamber agrees to provide to the Council upon the signing of this Agreement evidence of incorporation pursuant to the *Associations Incorporations Act 1981*, and thereafter on or before 1 July of each year during which the Special Rate remains in force. This Agreement is subject to, and conditional on, the Chamber's compliance with this obligation, which is a continuing obligation.
- 4.14 In performing its obligations under this Agreement, the Chamber must at all times –
- 4.14.1 be, and maintain its legal status as, an association registered under the *Associations Incorporations Act 1981*;
 - 4.14.2 comply with all requirements imposed on it under the *Associations Incorporations Act 1981*, and any other applicable law;
 - 4.14.3 act only in accordance with the Chamber's Statement of Purposes and the Rules of the Chamber that are currently in force;
 - 4.14.4 not amend or seek to amend the Chamber's Statement of Purposes or the Rules of the Chamber without first giving not less than 30 days' notice to the Council of the proposed amendments;
 - 4.14.5 conduct itself in a manner so as to benefit all of the Eltham Town Centre and its environs as set out in the Chamber's Statement of Purposes without any discrimination between persons and businesses who have paid the Special Rate and persons and businesses who are not members of the Chamber;

- 4.14.6 ensure that the Rules of the Chamber, with respect to membership, read as follows –

'Payment of the Special Rate entitles both the owner and the tenant of a property which is liable to pay the Special Rate to be deemed and fully paid up financial members of the Eltham Chamber of Commerce and Industry, with full voting and other membership rights (provided however, such entitlement to membership of the Eltham Chamber of Commerce and Industry does not in any way bind an owner or a tenant to be and become a member of the Eltham Chamber of Commerce and Industry in circumstances where, in order to give force and effect to such membership entitlement, the owner or the tenant (as the case requires) must, separately, sign such forms and do such other acts, matters and things as are required under the rules of the Eltham Chamber of Commerce and Industry in relation to membership, including the making (and the signing of) an application for membership and, if required, the payment of a membership fee so as to give effect to such membership entitlement).'

- 4.15 At any one time, the Chamber must ensure that at least one third of its committee members attend the annual governance training provided by the Council in accordance with Clause 2.7; and
- 4.16 The Chamber agrees that it is the responsibility of the Chamber to carry out such necessary acts in accordance with this Agreement in order to achieve or otherwise give effect to the objectives of the Centre Business Plan and the Chamber Business Plan.

5. Reporting and Accounting Requirements

- 5.1 The Chamber must keep and maintain to the satisfaction of the Council, proper accounting records as to the manner in which it expends the Special Rate and the Fund.
- 5.2 Without limiting the generality of Clause 5.1, the Chamber must provide to the Council by the first [1] working day of the month in which the Special Rate payment falls due a report that includes -
- 5.2.1 financial information including a Profit and Loss Statement and a Balance Sheet for the previous six months; and
- 5.2.2 the President's Report and a Marketing Report describing activities undertaken and an assessment of the outcomes in relation to achieving or not achieving the objectives stated in the Chamber Business Plan.
- 5.3 Subject to Clause 4.1, the approval for payment of the Special Rate proceeds to the Chamber is based on the acceptance by Council of the report provided in Clause 5.2.
- 5.4 If the Council is not satisfied with the financial information provided by the Chamber in accordance with Clause 5.2 –
- 5.4.1 a meeting must be convened between the Council and the Chamber to ensure that the Special Rate proceeds are being expended for the purposes for which they were declared and levied; and
- 5.4.2 the Council, in its absolute discretion, may appoint a member of its staff or any other appropriately qualified person to investigate or

audit the details of the financial information or the manner in which the Special Rate or the Fund or any part of the Special Rate or the Fund paid to the Chamber is to be, or has been, expended.

- 5.5 The Chamber must at all times follow the Chamber Annual Budget and the Chamber Business Plan.
- 5.6 At all times during this Agreement, the Chamber must provide the Council with reasonable access to any books of account, documents or other materials in the possession, custody or control of the Chamber as may reasonably be required or requested by an authorised member of the Council's staff or other person appointed in connection with such investigation or audit.
- 5.7 The Chamber must provide all reasonable and necessary cooperation and assistance to the member of the Council's staff or other person so appointed to enable that person to satisfactorily conduct the investigation or audit.
- 5.8 The Chamber must operate a separate bank account for the Special Rate proceeds.
- 5.9 Subject to sub-clause 4.14.4 the Chamber must –
 - 5.9.1 give to the Council written notification of any proposed special resolution which the Chamber proposes to put in relation to any amendment to its Statement of Purposes or the Rules of the Chamber to the extent that such amendment has, or is likely to have, an effect on the proper administration of the Special Rate or the Fund; and
 - 5.9.2 if the special resolution is subsequently carried, provide the Council with a copy.
- 5.10 The Chamber must send to the owners and occupiers of all properties included in the Special Rate scheme Notices of Annual General Meeting and Minutes of that meeting and make available for inspection the Annual Financial Statement of the Chamber.

6. Term of Agreement

This Agreement commences on **1 July 2016** and will end on **30 June 2021**, unless this Agreement is terminated earlier pursuant to Clauses 7 or 8 of this Agreement.

7. Termination of Agreement by Council

- 7.1 The Council may in its absolute discretion terminate this Agreement by notice if the Chamber is in breach of any of its obligations under this Agreement.
- 7.2 If the Council decides to terminate this Agreement, it may first give to the Chamber a notice which –
 - 7.2.1 specifies the alleged breach;
 - 7.2.2 requires the alleged breach to be remedied within fourteen [14] days; and
 - 7.2.3 advises that if the breach is not remedied within the specified period, the Council will immediately terminate the Agreement.

- 7.3 In the event that the Council terminates this Agreement then –
- 7.3.1 no further amounts shall be paid to the Chamber under Clauses 2.1 and 2.4;
 - 7.3.2 the Chamber must seek the written approval from the Council to complete any payment obligations for works in progress or goods or services ordered and within the Chamber Annual Budget and the Chamber Business Plan as applicable to the date of termination;
 - 7.3.3 subject to sub-clause 7.3.2, the Chamber must immediately pay all outstanding invoices relevant to the Fund as at the date of termination;
 - 7.3.4 the Chamber must repay to the Council within seven [7] days of receiving a notice of termination the balance then remaining of any unexpended Special Rate or Fund monies previously paid to it; and
 - 7.3.5 the Chamber must within fourteen [14] days of receiving a notice of termination provide to the Council a final expenditure report as applicable to the date of such termination.

8. Termination of Agreement by Chamber

- 8.1 The Chamber may, for any reason, terminate this Agreement by giving not less than three [3] months' notice to the Council (or otherwise in accordance with an alternative arrangement agreed to by the Council).
- 8.2 In the event that the Chamber terminates this Agreement then –
- 8.2.1 no further amounts shall be paid to the Chamber under Clauses 2.1 and 2.4;
 - 8.2.2 the Chamber must, by payment of all outstanding invoices, complete any payment obligations for works in progress or goods or services ordered and within the Chamber Annual Budget and the Chamber Business Plan as applicable to the date of termination;
 - 8.2.3 the Chamber must repay to the Council any unexpended monies previously paid to it prior to the termination date; and
 - 8.2.4 the Chamber must within fourteen [14] days of terminating this Agreement, provide to the Council a final expenditure report as applicable to the date of such termination.

9. Indemnity

The Chamber agrees to indemnify the Council and keep the Council indemnified from and against all and any damage, loss, cost or liability incurred or suffered by the Council as a result of the payment to the Chamber of the proceeds of the Special Rate or the Fund, except to the extent that the loss or damage is caused or contributed by the negligent or unlawful act or omission or default of the Council.

10. Insurance to be Effected by the Chamber

- 10.1 The Chamber must maintain a public liability policy of insurance with an insurer approved by the Council for an amount of not less than \$10 million (concerning one single event).

- 10.2 The Chamber must pay all insurance premiums on or before the due date for payment and provide to the Council copies of the certificate of currency on or before 1 July of each year.
- 10.3 The Chamber must not do anything which may make any insurance effected by the Chamber invalid or which may increase the insurance premiums. If the insurance premium increases, the Chamber must pay that increase.

11. Council Contact

- 11.1 Council's **Strategic and Economic Planning Unit** is responsible for the management and administration of the provisions set out in this Agreement.
- 11.2 Any documentation which the Chamber is required to provide to the Council pursuant to this Agreement must be provided to that department or to a nominated officer in that department.

12. Mutual Assistance

- 12.1 The Council and the Chamber must at regular intervals monitor the operation of this Agreement and the discharge of the obligations of the parties under it.
- 12.2 The Council and Chamber must each nominate a person to liaise and consult to facilitate the implementation of this Agreement in the overall interests of the Eltham Town Centre.

13. Intellectual Property

- 13.1 The Council and the Chamber agree that the Intellectual Property in all Agreement material will vest in the Council. The Chamber must ensure that any person, including employees, agents and sub-contractors engaged by it in the provision of services agrees to assign to the Council all of the Intellectual Property in the Agreement material.
- 13.2 The Chamber acknowledges that the Council has property and copyright in any discoveries, inventions, patents, artistic designs or other rights arising out of or in performance of this Agreement.
- 13.3 Notwithstanding Clauses 13.1 and 13.2 –
- 13.3.1 the Council agrees that the Chamber has, without any recourse to Council, full control and decision-making power in relation to the development, creation and implementation of any Intellectual Property based on the needs and requirements of the Chamber as the Chamber reasonably sees fit; and
- 13.3.2 nothing in this Agreement affects or in any way alters the Chamber's ownership of or rights to any pre-existing intellectual property.

14. Dispute Resolution

- 14.1 The Council and the Chamber undertake at all times during this Agreement to use their best endeavours to ensure that any disputes or differences arising under this Agreement are resolved informally and in a spirit of mutual cooperation and understanding and that any steps to formally arbitrate a dispute are taken as a last resort.

- 14.2 Subject to Clause 14.1, in the event of a dispute regarding the interpretation of any part of this Agreement or the conduct of either party in relation to this Agreement, the matter is to be resolved in the following manner –
- 14.2.1 in the first instance, either party must by notice request a meeting between the respective contact persons of the Council and the Chamber;
 - 14.2.2 as soon as a meeting date has been agreed to between the parties, the Council or the Chamber (as the case may require) must prepare a written report specifying the details of the dispute or disagreement and must forward the report to the other party at least seven [7] days prior to the date of the meeting; and
 - 14.2.3 in the event that an agreement specifying a way forward to overcome the dispute is not reached at the meeting specified in sub-clause 14.2.1, the Council or the Chamber (as the case may require) may by notice request a further formal meeting involving senior representatives of the Council and the Chamber. A written report specifying the details of the dispute or disagreement must be forwarded to the other party at least [7] days prior to the date of the formal meeting. Either party may have an independent observer of their choice present at the meeting.
- 14.3 Subject to clauses 14.1 and 14.2, in the event of a dispute regarding the interpretation of any part of this Agreement or the conduct of either party in relation to this Agreement, either party may exercise its right to refer the unresolved matter to an independent arbitrator appointed by the Institute of Arbitrators Australia. The Council and the Chamber agree to be equally responsible for the fees of the independent arbitrator appointed.

15. Confidentiality

- 15.1 The Chamber must –
- 15.1.1 keep confidential;
 - 15.1.2 maintain proper and secure custody of; and
 - 15.1.3 not use or reproduce in any form,
- any confidential information unless the Chamber has received the prior written consent of the Council or as required by law.
- 15.2 Immediately upon the request of the Council the Chamber must –
- 15.2.1 deliver to the Council all confidential information in its possession that is capable of being delivered; and
 - 15.2.2 delete, erase, or otherwise destroy all confidential information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of being delivered to the Council.

16. Further Documents

The Council and the Chamber will do all necessary and reasonable acts, matters and things and to prepare and sign all further documents as are both reasonable and necessary to give effect to this Agreement and to ensure that this Agreement is fully carried out.

17. Service of Notice and Documentation

17.1 Any notice required to be served under this Agreement must be in writing and must be served by post, facsimile transmission or hand delivered to –

17.1.1 the Council at its address set out at the commencement of this Agreement, the Council's Administration Offices or any other address notified in writing to the Chamber by the Council; and

17.1.2 the Chamber at its address set out at the commencement of this Agreement, the Chamber's registered office address or any other address notified in writing to the Council by the Chamber,

and is conclusively regarded as having been served at the expiration of 48 hours from the time of posting, or if in the case of facsimile transmission or hand delivery, the date of successful facsimile transmission or hand delivery if delivered before 5 pm on a Business Day, otherwise on the next Business Day.

17.2 Any document which is to be provided to the Council or the Chamber pursuant to this Agreement must be served by post or hand delivered to –

17.2.1 the Council, in accordance with sub-clause 17.1.1; and

17.2.2 the Chamber, in accordance with sub-clause 17.1.2,

and is conclusively regarded as having been served at the expiration of 48 hours from the time of posting, or if in the case of hand delivery, the date of successful hand delivery if delivered before 5 pm on a Business Day, otherwise on the next Business Day.

18. Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, express or implied, affecting this subject matter are superseded by this Agreement and have no effect.

19. Waiver

If the Council does not exercise or delays exercising any of the Council's rights under this Agreement, it will not be a waiver of the breach of this Agreement by the Chamber or of the Council's rights under this Agreement.

20. Assignment

The Chamber must not assign its rights under this Agreement without the Council's consent, which must not be unreasonably withheld or given.

21. Governing Law

This Agreement is governed by, and each party submits to, the laws of the State of Victoria.

22. Counterparts

This Agreement may be executed in counterparts.

23. Modification

No modification, variation or amendment to this Agreement will be of any force unless the modification, variation or amendment is in writing and executed by each party.

24. Binding Agreement

The Council and the Chamber intend to be legally bound by the Terms and Conditions of this Agreement.

25. Interpretation

In this Agreement, unless the contrary intention appears –

- 25.1 Any reference to legislation includes any subordinate legislation made under that legislation and any later equivalent re-enactment or substitute legislation.
- 25.2 If a party constitutes more than one person, this Agreement binds them jointly and each of them severally.
- 25.3 Headings are for guidance only and do not affect the operation of this Agreement.
- 25.4 A reference to a person includes a firm, partnership, association, corporation or other corporate body.
- 25.5 A reference to a person by way of that person's position with Council includes a person –
 - 25.5.1 authorised to carry out the powers, duties and functions of that person at the Council;
 - 25.5.2 acting in that capacity; and
 - 25.5.3 if that position in the Council ceases to exist, any person exercising any power, duty or function which was previously a power, duty or function of the previous position.
- 25.6 If a provision of this Agreement is void or voidable by a party, unenforceable or illegal, but would not be so if read down or severed from the Agreement, it must be read down or severed accordingly.
- 25.7 The singular includes the plural and the plural includes the singular.
- 25.8 Any gender includes each other gender.
- 25.9 Where a word or phrase has a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning.

EXECUTED AS AN AGREEMENT

Signed

Chief Executive Officer

Nillumbik Shire Council

Date

Signature of Witness _____

Signed

President [Public Officer]

Eltham Chamber of Commerce and Industry

Date

Signature of Witness _____

The Common Seal of the
Eltham Chamber of Commerce and Industry
was affixed in accordance with
its Rules of Chamber dated this

..... day of 2016

SCHEDULE

Statute Law

1. The Council must, generally, comply with its obligations under the Act and the regulations made pursuant to the Act, which include requirements for the Council 'to ensure transparency and accountability in Council decision making' and to ensure that 'resources are managed in a responsible and accountable manner' (sections 3C and 3D of the Act).
2. The Council must, specifically, comply with section 163(6) of the Act which provides –

163 Special rate and special charge

...

- (6) A Council may use the money from a special rate or special charge for any or all of the following –
 - (a) any purpose for which the rate or charge was made and the purchase of land and materials required for that purpose (including land acquired before the Council declared the rate or charge);
 - (b) repayment of money borrowed for anything mentioned in paragraph (a) and of interest on that money;
 - (c) maintenance and repair of damage, management, advertising or security; and
 - (d) any expenses related –
 - (i) to anything mentioned in paragraphs (a) to (c); or
 - (ii) to the declaration or levying of the rate or charge.

Common Law

3. The Council must ensure that the Chamber (in relation to the expenditure of the proceeds of the Special Rate and all decisions made in relation to the Special Rate) acts as the agent of the Council, administratively only, and further in circumstances where the Council, at all times, retains full responsibility for the approval, direction and control of the expenditure of the proceeds of the Special Rate. The Council, in these circumstances, is not unlawfully delegating any of its statutory functions, powers or duties which would otherwise breach the Act.

Eltham Town Special Rate Scheme Renewal

Summary of Submissions

Attachment 1 – Policy and Services Committee Meeting of Council 7 June 2016

No.	Business/ Proprietor	Submission Summary	Response
1	Lorna Bliem, R. Bliem & Associates Pty Ltd, Suites 9- 10, 23 Dudley Street, Eltham	Supporting the scheme renewal. <i>'This scheme benefits all the traders by providing funds which can be spent on behalf of all traders for purposes such as marketing and promotion of businesses and also for providing activities, services and goods that traders would struggle to pay for on their own. These funds provide for a coordinated approach to promoting local businesses.'</i>	Noted
2	Fee Sievers, President, Eltham Chamber of Commerce & Industry, 18 Diamond Street, Eltham	Supporting the scheme renewal on behalf of the ECCI Committee of Management. <i>'The Special Rate scheme supports local business, promotes and markets the traders and their businesses and creates a sense of welcome for shoppers who come to eat, drink and purchase goods.'</i> <u>The ECCI President requested to be heard.</u>	Noted
3	B.R. Smyth, 191 Mt Pleasant Road, Eltham Representing the following properties: 9 Dudley St, (shops 1-10); 1006 Main Rd; 1008 Main Rd; 970 Main Rd; 900 Main Rd;	Objecting to the proposed renewal stating that it is 'imposition', therefore affirming that the property owners don't want Council to declare the special rate on them. <i>'It is an imposition to consult temporary lessees of business premises (as the Chamber of Commerce, inter alia, are now doing) when the owners are to be levied for payment as a result of agreements to which they are not a party and may not even be aware of.'</i>	This submission refers to 20 properties. Many of these properties already submitted separate objections and /or responded to the trader's survey. The Marketing Officer and the Chamber President together with other committee members visited most of the businesses in February 2016 to gauge the level of support and answer queries regarding the proposal. The initial feedback from this consultation was very positive and received over 110 signed letters in support of the Special Rate scheme renewal. The Special Rate renewal process commences with the Council resolution of Intention to Declare and formally advises all ratepayers and businesses in the Special Rate scheme area.

No.	Business/ Proprietor	Submission Summary	Response
	<p>929 Main Rd; 931 Main Rd; 933 Main Rd; 22, 40 & 50 Commercial Place.</p> <p>Please note that there is no support documentation for the ownership of these properties.</p>	<p><i>My specific submission is that your Council should not consider imposition of a special rate without a survey of the rate payers and the consent of majority of those rate payers.'</i></p>	<p>"... Following the receipt of a written request from the Eltham Chamber of Commerce and Industry to renew the Special Rate scheme to fund the marketing and promotion of the Eltham Town, Council at its Ordinary meeting on 22 March 2016 resolved to give notice of its intention to declare a Special Rate for that purpose.</p> <p>In accordance with the requirements of the <i>Local Government Act 1989</i> formal notification of the proposed Special Rate scheme was undertaken, with a public notice published in the Diamond Valley Leader on 30 March 2016 and also by written notification being sent to the owners and occupiers of properties upon which the Special Rate would be levied ..."</p>
4	<p>Bruce Holland, Gartman Inc. Pty Ltd, Midway Arcade Property Trust, P.O. Box 63, Eltham</p> <p>This submission refers to 3 shops, 972 Main Road (1-2, 3-8, 9-13)</p> <p>These properties already submitted a separate objection.</p> <p>Please note that there is no support documentation for the ownership of these properties.</p>	<p>Objecting to the proposed renewal.</p> <p><i>'The special rates have not in the past delivered any tangible benefit to the owners or tenants of the Eltham Town properties.</i></p> <p><i>As owners and tenants ourselves for some 50 years we have meekly paid up for special rates and car parking levies only to see the funds poorly administered and in many cases wasted as demonstrated by the many versions of the Town Square and parking land sold off.'</i></p>	<p>A coordinated and collective approach is aimed at maintaining and improving the Eltham Town centre performance over time. This includes increasing patronage and expenditure, business attraction and investment.</p> <p>Some of the Eltham Chamber of Commerce & Industry recent activities and achievements include: enhancement of the Eltham Town brand; ongoing development of the Eltham Town website; continuation of integrated marketing campaigns, events and competitions including the Eltham Jazz Food & Wine Festival. The Chamber also provides an effective communication, engagement and advocacy role for individual businesses in the centre and for the town as a whole.</p> <p>This is considered to be of benefit both directly and indirectly to all businesses and property owners located within the designated area and the wider community and that the value of properties included in the scheme, their desirability as a letting proposition, and their general image will be enhanced.</p> <p>With regard to the special benefit, it is considered that all the properties used for retail, commercial and professional purposes in the proposed scheme will receive special benefit through increased economic activity.</p> <p>Traders who contribute to the scheme are provided with ongoing opportunities to participate in decision-making on how the Special Rate funds are spent on marketing and promotional activities, through the sub-committees of the Chamber and through surveys regarding their priorities and preferences for marketing activities.</p>

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5	<p>Bernadette J Robinson, Petticoat Junction, Shop 1/ 974 Main Road, Eltham</p> <p>The business provided its lease agreement/ rate notice confirming that they are liable to pay the rate.</p>	<p>Objecting to the proposed renewal.</p> <p><i>'Council has erred in placing reliance on the advice of the Eltham Chamber Committee that there is sufficient support for the renewal from business operators throughout the precinct ... Council should have noted that the ECCI entrusted the survey to gauge the level of support to a person with a fundamental conflict of interest ...</i></p> <p><i>As required by S163 (2D) (3) (ac) Council has not specified in the declaration "the total cost of the performance of the function or the exercise of the power" ...</i></p> <p><i>As in objection above; Council is also in contravention of S163B that requires the special rate to be limited ...'</i></p>	<p><u>Same as submission 4.</u></p> <p>The ECCI is an independent and incorporated entity managed by its elected committee of management with traders and landowners participating in committees work. The Committee members are volunteers and making valuable contribution to the Chamber and the Eltham communities. The relationship between ECCI and Council is governed by the Payment Agreement to ensure the most effective management of Special Rate funds.</p> <p>The Council specified the total cost in the Public Notice: "In performing functions and exercising powers in relation to activities associated with the encouragement of commerce and retail activity in and around the area for which it is proposed the Special Rate will be declared, the Council intends to levy and spend an amount of \$130,000 for the first year of the scheme; raising in total an amount of \$650,000 over the five year period of the scheme."</p> <p>"For the purposes of having determined the total amount of the Special Rate to be levied under the Scheme, Council considers and formally determines for the purposes of sections 163(2)(a), (2A) and (2B) of the Act that the estimated proportion of the total benefits of the Scheme to which the performance of the function and the exercise of the power relates (including all special benefits and community benefits) that will accrue as special benefits to all of the persons who are liable to pay the Special Rate is in a ratio of 1:1 (or 100%)."</p>
6	<p>Gary Brookes, The Common, 26 Commercial Place, Eltham & K. Chandler, Director, Elsho P/L, PO Box 281, Eltham</p> <p>26 Commercial Place and 978/980 Main Road, Eltham</p>	<p>Objecting to the proposed renewal. We reject the scheme on the following grounds:</p> <p><i>'The ECCI has failed to enhance the town brand in all of the years that it has been responsible for it ... ECCI were allowed to be coerced in order to misrepresent the views of the traders ... The current marketing campaigns that are being run are very old style marketing... A new committee has been formed, even though there has been some activity, not once has our operation been approached ...'</i></p>	<p>Traders who contribute to the scheme are provided with ongoing opportunities to participate in decision-making on how the Special Rate funds are spent on marketing and promotional activities, through the sub-committees of the Chamber and through surveys regarding their priorities and preferences for marketing activities.</p> <p>The funds collected through the Special Rate scheme are levied by Council and then used to reimburse the Eltham Chamber of Commerce and Industry for its expenditure on advertising, promotion, management and business development expenses for the Eltham Town centre.</p> <p>Some of the Eltham Chamber of Commerce & Industry recent activities and achievements include: enhancement of the Eltham Town brand; ongoing development of the Eltham Town website; continuation of integrated marketing campaigns, events and competitions including the Eltham Jazz Food & Wine Festival. The Chamber also provides an effective communication, engagement and advocacy role for individual businesses in the centre and for the town as a whole.</p>

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7	<p>Rebecca Jordan-Kiefer, Eltham Midway Jewellers, Shop 3/ 974 Main Road, Eltham</p> <p>The business provided its lease agreement/ rate notice confirming that they are liable to pay the rate.</p>	<p>Objecting to the proposed renewal on the same grounds as submissions 4 & 5.</p>	<p><u>Same as submissions 4 & 5.</u></p>
8	<p>Navin Govil, Frolland Pty Ltd, 970 Main Road, Eltham</p> <p>The business provided its lease agreement/ rate notice confirming that they are liable to pay the rate.</p>	<p>Objecting to the proposed renewal on the same grounds as submissions 5 & 7.</p> <p><i>'As required by S163 (2D) (3) (ac) Council has not specified in the declaration "the total cost of the performance of the function or the exercise of the power ...</i></p> <p><i>Council has contravened S222 (1) by failing to make available any "copies of the proposed declaration of the Special Rate" as required by s163 (1B) (a) & (c)...</i></p> <p><i>This contravention also results in Council's Notice of Intention to declare a Special Rate Scheme for Eltham Town being mistaken in its assertion that such copies would be provided, placing Council in contravention of its S163(1B) obligation to provide a reliable public notice.'</i></p>	<p><u>Same as submissions 5 & 7.</u></p> <p>Following the receipt of a written request from the Eltham Chamber of Commerce and Industry to renew the Special Rate scheme to fund the marketing and promotion of the Eltham Town, Council at its Ordinary meeting on 22 March 2016 resolved to give notice of its intention to declare a Special Rate scheme for that purpose.</p> <p>The Council specified the total cost in the Public Notice: "In performing functions and exercising powers in relation to activities associated with the encouragement of commerce and retail activity in and around the area for which it is proposed the Special Rate will be declared, the Council intends to levy and spend an amount of \$130,000 for the first year of the scheme; raising in total an amount of \$650,000 over the five year period of the scheme."</p> <p>In accordance with the requirements of the <i>Local Government Act 1989</i> formal notification of the proposed Special Rate was undertaken, with a public notice published in the Diamond Valley Leader on 30 March 2016 and also by written notification being sent to the owners and occupiers of properties upon which the Special Rate would be levied.</p> <p>Copies of the proposed declaration of the Special Rate and a detailed plan of the Scheme area (including a list of all properties included in the scheme, with the estimated amounts payable by each property based on the 2014 CIV valuation) were available for inspection during normal office hours at the Council offices in Greensborough for a period of at least 28 days after the date of this notice, being until Monday, 25 April 2016. The Council Report with all attachments is available online at http://www.nillumbik.vic.gov.au/Council/Minutes-and-agendas</p>

No.	Business/ Proprietor	Submission Summary	Response
9	<p>John Wooller, Thompsons Pharmacy, 962 – 964 Main Road, Eltham & Norman Williams, Director, NEC & L Nominees Pty Ltd, PO Box 11, Eltham</p> <p>This business initially signed the Chamber trader’s survey in support of the scheme renewal.</p>	<p>Objecting to the proposed renewal.</p> <p><i>‘... the basis of our objection is that scheme is funded by a disproportionate number of traders and that the promotion of the Town Square benefits the entire community... we also feel that the Jazz festival has such broad benefits to the entire community that it is now beyond the responsibility of a few local businesses to fund this festival.</i></p> <p><i>We are not opposed to special rate scheme in general terms but until the amount of the special rate and the Council contributions has been adequately reviewed we oppose the special rate.’</i></p>	<p>The owner supports the scheme for the 18 Commercial Place property and opposes the renewal for the 962 – 964 Main Road property occupied by the pharmacy.</p> <p>The Eltham Town Special Rate scheme is capped at \$130,000 annually and it is distributed amongst 175 properties in a proportionate way using the property CIV as calculation method.</p> <p>The Special Rates are driven by the CIV. Increases and decreases in the actual dollar amounts payable are dependent upon the proportion of CIV movement.</p> <p>The Eltham Chamber of Commerce & Industry contributes \$25,000 annually from the special rate monies towards the Eltham Jazz, Food & Wine festival. As a major community event, Council provides the balance from other sources.</p>
10	<p>Kevin & Glenda Brent, Brent’s Patisserie, 3 Dudley Street, Eltham</p> <p>The business provided its lease agreement/ rate notice confirming that they are liable to pay the rate.</p>	<p>Objecting to the proposed renewal on the same grounds as submissions 5 & 7.</p> <p>This business initially signed the Chamber trader’s survey in support of the scheme renewal.</p>	<p><u>Same as submissions 5 & 7.</u></p>
11	<p>Stephen & Sarah Woolway, The Nest 40 Commercial Place, Eltham</p> <p>This objection has a petition attached, see summary below.</p>	<p>Objecting to the proposed renewal.</p> <p><i>‘...Our objections to the Special Rates are based, not solely on what we believe to be a failure of this scheme to bring increased customer trade and revenue to the retail/ hospitality/ services businesses of the Special Rates area, but also, by the lack of transparency as to the implementation and results of the survey conducted by the Chamber;</i></p>	<p>The Eltham Town Special Rate scheme is capped at \$130,000 annually and it is distributed amongst 175 properties in a proportionate way using the property CIV as calculation method.</p> <p>The Special Rates are driven by the CIV. Increases and decreases in the actual dollar amounts payable are dependent upon the proportion of CIV movement. Over 100 properties liable to pay the special rate will have marginal movements (increase or decrease) of less than \$50. It is expected that half of the properties will pay less and the other half will pay marginally more. This means that it is possible to have an increase in the CIV but have a reduction in special rates.</p>

No.	Business/ Proprietor	Submission Summary	Response
		<p><i>contradictory statements regarding the calculation of the Special Rates from the President of the Chamber and Darko Popovski and yourself to the Traders; the results of a Special Rates survey conducted by Eltham Traders themselves, which seriously calls into question the acquisition and final numbers of the Chamber survey...'</i></p> <p>This business initially signed the Chamber trader's survey in support of the scheme renewal.</p>	<p>The funds collected through the Special Rate scheme are levied by Council and then used to reimburse the Eltham Chamber of Commerce and Industry for its expenditure. Council does not retain any of the Special Rate funds. Council covers the administration and management costs associated with the program from its existing operating budget.</p> <p>The Marketing Officer and the Chamber President together with other committee members visited most of the businesses in February 2016 to gauge the level of support and answer queries regarding the proposal. The initial feedback from this consultation was very positive and received over 110 signed letters in support of the Special Rate scheme renewal. The Committee of Management has an open door policy and presents many opportunities for traders to actively participate.</p> <p>The benefit is a common special benefit rather than individual businesses promotion ... Council considers and formally determines for the purposes of sections 163[2][a], [2A] and [2B] of the Act that the estimated proportion of the total benefits of the scheme to which the performance of the function and the exercise of the power relates (including all special benefits and community benefits) that will accrue as special benefits to all of the persons who are liable or required to pay the Special Rate is in ratio of 1:1 (or 100%). This is on the basis that, in the opinion of the Council, all of the services and activities to be provided from the proceeds of the expenditure of the Special Rate are marketing, promotion and advertising related and will accordingly only benefit those properties and businesses included in the scheme that are used, or reasonably capable of being used, for commercial, retail or professional purposes. (Council Report, Intention to Declare 22 March 2016).</p>
12	<p>Rachael O'Connor-Horan, Eira Café, 1 Pryor Street, Eltham</p> <p>This objection has a petition attached, same as above.</p>	<p>Objecting to the proposed renewal.</p> <p><i>'...Our objections to the Special Rates are based on what we believe to be a failure of this scheme to bring increased customer trade and revenue ... and also, by the lack of transparency as to the results of the survey conducted by the Chamber; as well as the results of a Special Rates survey conducted by Eltham Traders themselves, which seriously calls into question the acquisition and final numbers of the Chamber of Commerce survey...'</i></p>	<p><u>Same as submission 11.</u></p>