

Marketing and Promotional Special Rate Administrative Payment Agreement

This Agreement is made between

Nillumbik Shire Council

PO Box 476, Greensborough VIC 3088

and

Diamond Creek Traders Association

PO Box 234, Diamond Creek, VIC 3089

For the period

1 July 2017 to 30 June 2022

Introduction

- A** In January 2018, 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 Diamond Creek Shopping Precinct.
- B** The Council has, following the declaration of the Special Rate, resolved to appoint the Diamond Creek Traders Association 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 Association 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 Association 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 funds from the Special Rate are 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 Association 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 Association;

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

Precinct Business Plan means the 5 year strategic business and development plan of the Precinct 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;

Precinct means the Diamond Creek Shopping Precinct;

Association means the Diamond Creek Traders Association and, where consistent with the context, includes the Association's employees and agents;

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

Association Business Plan means the business plan of the Precinct prepared by the Association 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 Association in accordance with the terms of this Agreement, and includes the additional in-kind contributions to the scheme made by the Council to the Association;

GST means GST within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) 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 Association 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* (Commonwealth) 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 Association, 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 Association 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 Association (administratively only and in circumstances where the Council has first authorised the expenditure for which it is, or has been proposed, the Association 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 Association 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 Association to pay the Special Rate proceeds in two [2] unequal instalments on the basis that the request is supported by the Council approved Association Annual Budget and the Association Business Plan.
 - 2.4 Council agrees to make in-kind contribution towards the special rate scheme of approximately \$20,000 per scheme renewal, with ongoing yearly contributions of approximately \$15,000.
 - 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 Association within five [5] business days. In the event that the Council requires more time in order to respond to the Association'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 Association or otherwise, the Council will notify the Association 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 Association agree that the additional proceeds will be carried forward by the Council and provided to the Association in the following financial year, except in the final year of the Special Rate term, where all additional amounts will be forwarded to the Association and expended by the end of the Special Rate term.
 - 2.7 Council agrees to provide governance training program for the Association 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 Association by providing a selection of accredited and recommended consultants in order to assist the Association to select a consultant to prepare the Association Business Plan.

3. Relationship between the Council and the Association

- 3.1 The Council and the Association 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 Precinct 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 Association 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 Association (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 Association first approve the proposed expenditure and activities of the Association, 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 Association 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 Association 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 Association 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 Association, 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 Association 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 Association 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 Association 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 Association Annual Budget or the Association Business Plan which does not relate to the expenditure of the Special Rate or the Fund.

4. The Association's Obligations

- 4.1 The Association 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 Association Annual Budget that details the manner in which the Association proposes to spend the Special Rate and the Fund in the upcoming financial year; and
 - 4.1.2 the Association 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 Association 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 Association Annual Budget and the Association Business Plan as it relates to the expenditure of the Special Rate and the Fund (and always having regard to the Precinct Business Plan which has previously been noted by the Council), the Association 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 Precinct Business Plan, the Association Annual Budget and the Association 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 Precinct marketing officer/ coordinator;
 - 4.2.11 The provision of in-Precinct communications; and
 - 4.2.12 Collaborative marketing activities such as The Artisan Hills campaigns.
- 4.3 The Association 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 Association Annual Budget or Association Business Plan.
- 4.4 In each financial year during which the Special Rate remains in force, the Association must expend the whole of the proceeds of the Special Rate paid to it by the Council, in accordance with the Association Annual Budget and the Association 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 Association 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 Association Annual Budget must incorporate such expenditure as a carried forward item.
- 4.6 Unless otherwise agreed to or directed by the Council, the Association agrees to appoint, as its consultant, a Precinct Marketing Officer/ Coordinator upon suitable terms and conditions.
- 4.7 The Association 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 Association.
- 4.8 The Association 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 Association agrees that the Association (and not the Council) will be liable for any debt or expense incurred by the Association over and above the amounts set out in the Council approved Association Annual Budget.
- 4.10 Where the Association Annual Budget specifies amounts in excess of the Special Rate proceeds for that financial year, the Association must inform the Council in writing of the source of the additional funding.
- 4.11 The Association agrees to develop a process mechanism to monitor the performance of the Precinct 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 Association 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 Association 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 Association's compliance with this obligation, which is a continuing obligation.
- 4.14 In performing its obligations under this Agreement, the Association 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 Association's Statement of Purposes and the Rules of the Association that are currently in force;
 - 4.14.4 not amend or seek to amend the Association's Statement of Purposes or the Rules of the Association 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 Diamond Creek Shopping Precinct and its environs as set out in the Association'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 Association;
- 4.14.6 ensure that the Rules of the Association, 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 Diamond Creek Traders Association, with full voting and other membership rights (provided however, such entitlement to membership of the Diamond Creek Traders Association does not in any way bind an owner or a tenant to be and become a member of the Diamond Creek Traders Association 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 Diamond Creek Traders Association 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 Association must ensure that at least one third of its committee members attend the governance training provided by the Council in accordance with Clause 2.7; and
- 4.16 The Association agrees that it is the responsibility of the Association to carry out such necessary acts in accordance with this Agreement in order to achieve or otherwise give effect to the objectives of the Precinct Business Plan and the Association Business Plan.

5. Reporting and Accounting Requirements

- 5.1 The Association 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 Association 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 Marketing Officer/ Coordinator Report describing activities undertaken and an assessment of the outcomes in relation to achieving or not achieving the objectives stated in the Association Business Plan.
- 5.3 Subject to Clause 4.1, the approval for payment of the Special Rate proceeds to the Association 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 Association in accordance with Clause 5.2 –
- 5.4.1 a meeting must be convened between the Council and the Association 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 Association is to be, or has been, expended.
- 5.5 The Association must at all times follow the Association Annual Budget and the Association Business Plan.
- 5.6 At all times during this Agreement, the Association must provide the Council with reasonable access to any books of account, documents or other materials in the possession, custody or control of the Association 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 Association 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 Association must operate a separate bank account for the Special Rate proceeds.
- 5.9 Subject to sub-clause 4.14.4 the Association must –
- 5.9.1 give to the Council written notification of any proposed special resolution which the Association proposes to put in relation to any amendment to its Statement of Purposes or the Rules of the Association 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 Association 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 Association.

6. Term of Agreement

This Agreement commences on **1 July 2017** and will end on **30 June 2022**, 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 Association 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 Association 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 Association under Clauses 2.1 and 2.4;
 - 7.3.2 the Association 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 Association Annual Budget and the Association Business Plan as applicable to the date of termination;
 - 7.3.3 subject to sub-clause 7.3.2, the Association must immediately pay all outstanding invoices relevant to the Fund as at the date of termination;
 - 7.3.4 the Association 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 Association 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 Association

- 8.1 The Association 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 Association terminates this Agreement then –
- 8.2.1 no further amounts shall be paid to the Association under Clauses 2.1 and 2.4;
 - 8.2.2 the Association must, by payment of all outstanding invoices, complete any payment obligations for works in progress or goods or services ordered and within the Association Annual Budget and the Association Business Plan as applicable to the date of termination;
 - 8.2.3 the Association must repay to the Council any unexpended monies previously paid to it prior to the termination date; and
 - 8.2.4 the Association 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 Association 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 Association 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 Association

- 10.1 The Association 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 Association 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 Association must not do anything which may make any insurance effected by the Association invalid or which may increase the insurance premiums. If the insurance premium increases, the Association must pay that increase.

11. Council Contact

- 11.1 Council's Business, Tourism and Marketing unit is responsible for the management and administration of the provisions set out in this Agreement.
- 11.2 Any documentation which the Association 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 Association 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 Association must each nominate a person to liaise and consult to facilitate the implementation of this Agreement in the overall interests of the Diamond Creek Shopping Precinct.

13. Intellectual Property

- 13.1 The Council and the Association agree that the Intellectual Property in all Agreement material will vest in the Council. The Association 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 Association 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 Association 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 Association as the Association reasonably sees fit; and

13.3.2 nothing in this Agreement affects or in any way alters the Association's ownership of or rights to any pre-existing intellectual property.

14. Dispute Resolution

14.1 The Council and the Association 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 Association;

14.2.2 as soon as a meeting date has been agreed to between the parties, the Council or the Association (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 Association (as the case may require) may by notice request a further formal meeting involving senior representatives of the Council and the Association. 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 Association agree to be equally responsible for the fees of the independent arbitrator appointed.

15. Confidentiality

15.1 The Association 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 Association has received the prior written consent of the Council or as required by law.

15.2 Immediately upon the request of the Council the Association 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 Association 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 Association by the Council; and
- 17.1.2 the Association at its address set out at the commencement of this Agreement, the Association's registered office address or any other address notified in writing to the Council by the Association,

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 5.00 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 Association 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 Association, 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 5.00 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 Association or of the Council's rights under this Agreement.

20. Assignment

The Association 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 Association 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]

Diamond Creek Traders Association

Date

Signature of Witness _____

The Common Seal of the
Diamond Creek Traders Association
was affixed in accordance with
its Rules of Association dated this

..... day of 2018

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 Association (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.