

Nunawading Traders – Governance & Establishing a special rate

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What is a special rate/charge scheme?

A special rate/charge scheme is a method of raising additional funds through property rates. These are different from general rates and charges because they are levied for particular works or services that collectively benefit properties within a defined area. Council can raise either a special rate or a special charge (or a combination of both), the differences of which can be described below:

- **Special Charge:** is a flat fee levy calculated by dividing the number of properties within the defined geographic area by the total amount to be raised.
- **Special Rate:** is a levy calculated using the Council's valuation of each property (Capital Improved Value) to determine the amount of money that each property will contribute to achieve the total value.

Marketing and Promotional Special Rate/Charge Schemes

- These schemes are only established in retail/commercial precincts or centres that have an incorporated business association and provide funding for promotional, marketing and business development projects and activities.
- Money is collected and forwarded to the business association at fixed terms based on the delivery of agreed projects over the duration of the scheme. Generally these schemes run for five years.
- The purpose of these schemes is to allow businesses within a defined area to form a collective group and in doing so benefit from resources that will provide collective advertising, promotion and business development.

The Process

- Traders need to demonstrate there is interest in the precinct to establish a traders association – this is usually completed by a group of traders surveying/canvassing other traders and establishing a group.
- Once there is sufficient interest the group would normally become incorporated (i.e. create a legal entity – like a company but established not for profit).

Incorporation process

1. To become an incorporated association, your group must:

- have at least five members
- not operate for the profit of its members (although an incorporated association can provide services or benefits to its members).

2. Choose a name – e.g. Nunawading Traders Association

- You must choose a name that reflects the purpose of the association.
- Your proposed name must not be identical or similar to one listed on [Search ASIC registers](#). This list is checked as part of the application process and you are unable to proceed through the application until a proposed name can be registered.
- Your association must have the word 'Incorporated' as the last word of its name. You may also use 'Inc.' or 'Inc'.

3. Create rules and purpose

Your association must have a written set of rules, also known as a constitution, which deals with the 23 matters set out in Schedule 1 to the *Associations Incorporation Reform Act 2012* (the Act). There is a template set of rules called the Model rules which you can choose to adopt to get started.

Your purpose could be something similar to

The Nunawading Traders Association gathers and represents the views of members and other Fitzroy Street precinct interests to provide a co-ordinated and cohesive strategy to keep our business precinct a vibrant and sustainable community for locals.

4. **Vote to incorporate the association**

In order to incorporate, the association must hold a meeting to vote on whether to do so. All members **(this could be the 5 people to start with)** must be given at least 21 days notice of the meeting.

- At this meeting, a majority of votes cast by members must:
- authorise a person, who is at least 18 years old and lives in Australia, to incorporate the association
- approve proposed rules that comply with the Act, or approve adoption of the model rules.
- Unless the association nominates another secretary, the person who lodges the application for incorporation becomes the first secretary of the incorporated association.

5. **Lodge an application with Consumer Affairs (\$37.60 with model rules)**

After you lodge your application

- When an application to incorporate an association is accepted, a certificate of incorporation showing the name of the incorporated association, registration number and date of incorporation, and a receipt of payment, will be emailed to the secretary and the person lodging the application.

Other things to consider

Just like starting a business you need to consider:

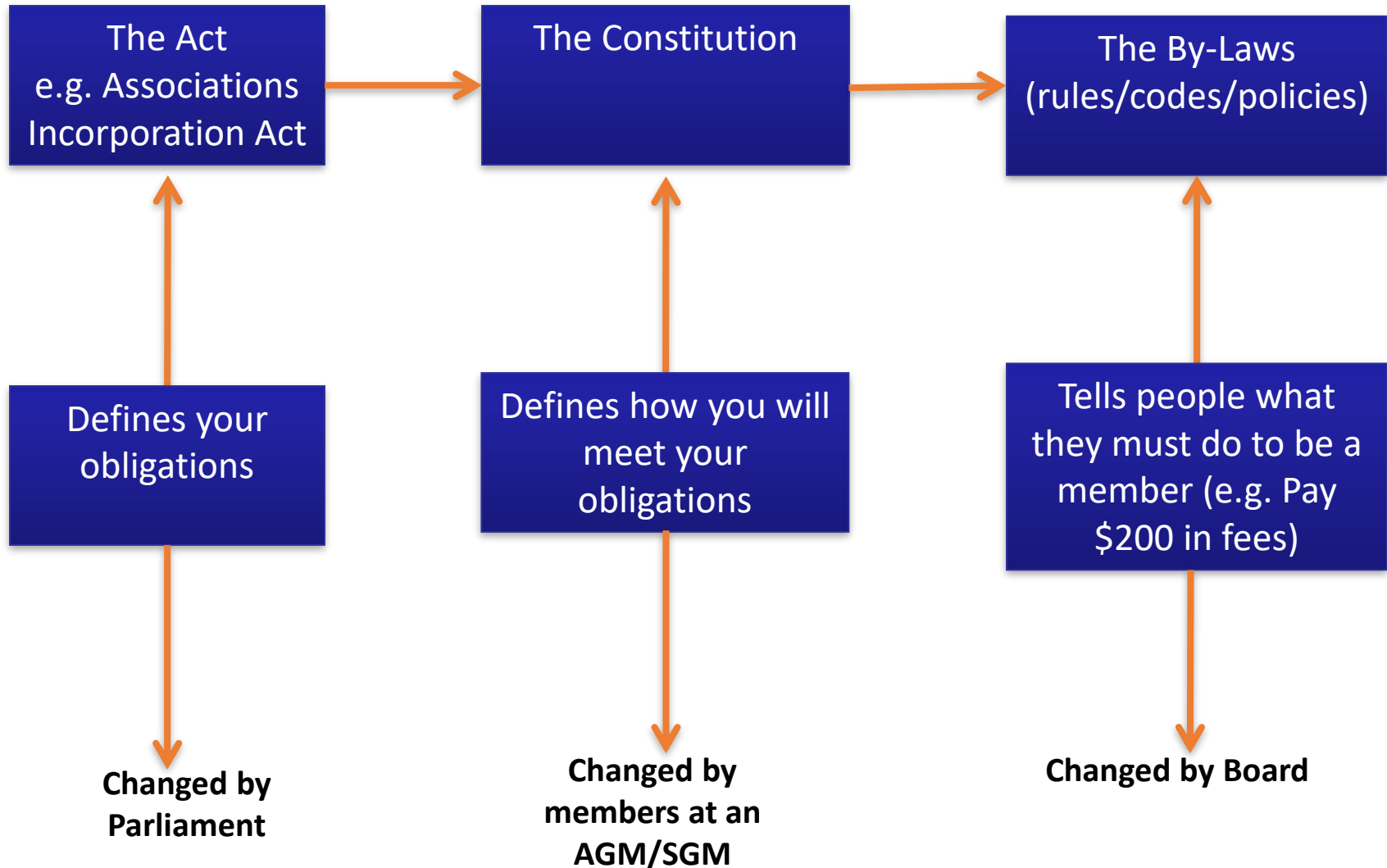
- ABN
- TFN
- GST
- Insurance

Why Incorporate?

- Many grants are not provided to unincorporated associations
- It more easily provides an entity that can lease, rent or borrow funds (rather than any individual)
- It creates a legal entity that can sue or be sued (rather than individual “members”)
- It provides some protection from individual board members being held liable for debts

(ask questions if you don't understand)

What gives you the power to meet and make decisions?



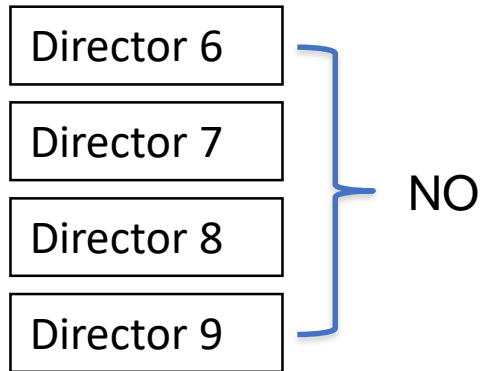
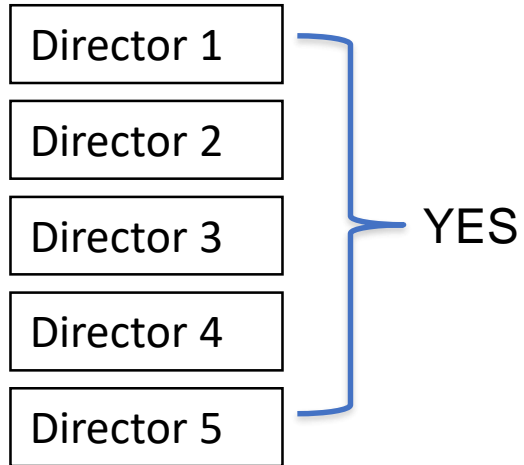
What is Governance?

“The way in which an organisation is **steered** and **stewarded**”

Institute of Chartered Secretaries and Administrators

Who is responsible for a decision of the Committee?

One Voice



One Voice

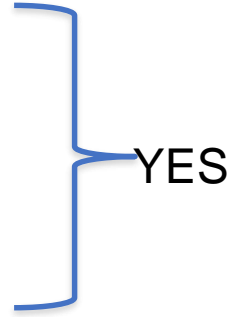


Director 1

Director 2

Director 3

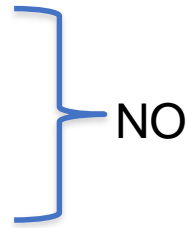
Director 4



Director 5

Director 6

Director 7



Director 8

Director 9

ABSENT

Legal Duties

- Duty to act bona fide in the best interests of the company
- Duty to exercise powers for proper purposes
- Duty to retain discretion
- Duty to avoid conflict of interest
- Improper use of position in the company
- Use of confidential information
- Related-party transactions
- Payments to directors
- Duty of care, skill and diligence
- The duty to prevent insolvent trading

Legal Responsibilities - The Duty to Act with Care and Diligence - S180(1) – Corporations Act

Board members must exercise their powers and discharge their duties with the care and diligence of a “reasonable person” in their position. In general terms you will meet the duty of care and diligence if you:

- Make a decision to take, or not to take, action in good faith and for a proper purpose; and,
- Do not have any material personal interest in the matter; and,
- **Inform yourself** about the matter to the extent you reasonably believe is appropriate; and,
- Reasonably believe that your judgement is in the Board’s best interests.

Guide to acting with care and diligence: (Can you tick the boxes?)

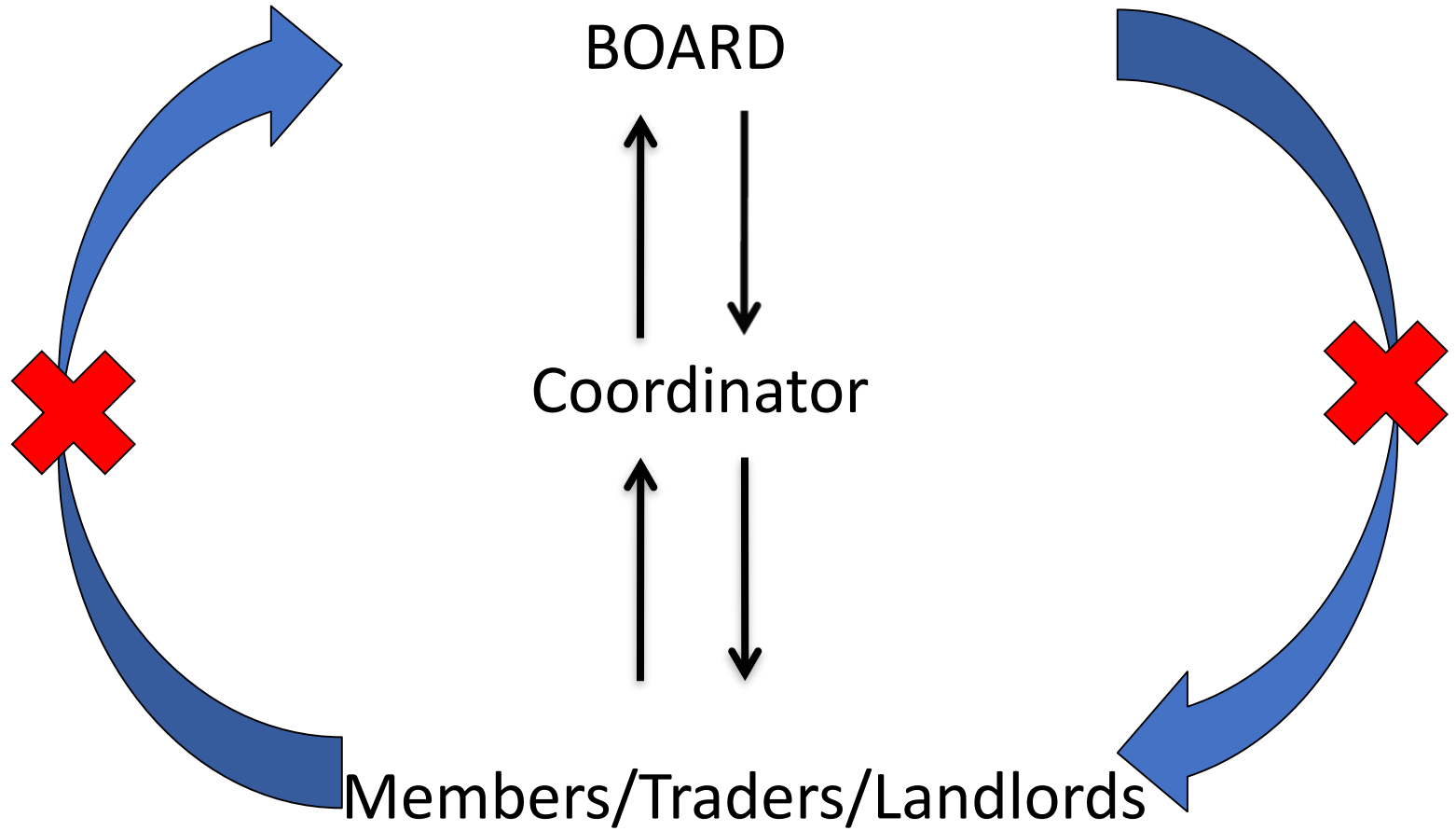
- Maintain appropriate levels of skill ✓
- Receive regular reporting ✓
- Ask Questions ✓
- Exercise independent judgement at all times ✓
- Act Honestly ✓
- Ensure you have **sufficient** information ✓
- If the matter is significant – seek EXPERT advice ✓

What should the board do?

- GOVERN

not

MANAGE



What are we funded to do:

encourage commerce and industry in the Shopping Centre:

- a) advertising;
- b) promoting and marketing;
- c) decorating;
- d) business development;
- e) employing a person to promote and market the precinct;
- f) preparation of a five-year Business Plan; and
- g) providing related assistance to occupiers of commercial, retail and professional service premises which are subject to the Special Charge.

How do we ensure this is done:

- On or before 1 September in each year during which the Special Charge is in force, the Association must submit to Council for its approval an Annual Budget and Annual Business Plan outlining how the Association proposes to expend the Special Charge proceeds in the upcoming Financial Year.
- In each Financial Year during which the Special Charge remains in force, the Association must attempt to fully expend the Special Charge proceeds paid to it by the Council in accordance with the Annual Budget and Annual Business Plan
- Provide council with copies of all contracts entered into with third parties which exceed \$10,000; and to provide evidence of the procurement process if requested by the Council
- the Association must at all times be, and maintain its legal status as, an association registered under the Associations Incorporation Act 1981 or the Associations Incorporation Reform Act 2012

As an employer your **funding agreement** requires you to:

You must:

- keep Council notified about the employment of a Marketing Coordinator;
- accept full legal responsibility for the employment of the Marketing Coordinator;
- the terms and conditions of employment between the Association and the Marketing Coordinator must be specified in a written contract between the Association and the Marketing Coordinator, and must include the following provisions:
 - that the position be reviewed annually based on annual performance reviews; and
 - that the period of employment must not exceed the Special Charge term.
 - provide Council with a copy of the contract of employment between the Association and the Marketing Coordinator; and
 - to keep Council notified of the outcome of each performance review during the term of this Agreement.

Your finances

the Association must keep and maintain income and expenditure records reconciled to the bank each month, and must provide the Council with:

- quarterly and half-yearly banking ledger reports and actuals / acquittals financial reports - such reports are to be submitted to the Council not later than 30 days after the end of each quarter and each half-year during each Financial Year
- quarterly expenditure summaries, to be submitted to the Council not later than 30 days after the end of each quarter during each Financial Year;
- an Annual Financial Statement must be audited by a person who is registered as a Company Auditor or CPA **must be submitted to the Council on or before 1 September in each year**
- an Annual Budget and Annual Business Plan, must be submitted to the Council on or **before 1 September in each year**
- **Should council not be satisfied they may appoint a person to analyse the financial state of your association**

Other items to remember:

- give the Council notice of any proposed special resolution to any amendment to its Statement of Purposes or rules and if the special resolution is subsequently carried, provide the Council with a copy
- **For all owners and occupiers of properties included in the Special Charge, the Association must:**
 - send to those persons all notices of Annual General Meetings and the Minutes of those meetings;
 - make available for inspection to those persons without charge:
 - the Annual Financial Statement of the Association; and
 - quarterly and half-yearly banking ledger reports and actuals / acquittals,
 - and the Association must give notice to those persons that such documents are available for inspection.
- the Association agrees to provide Council with the following additional reporting materials:
 - annual Recipient Body Survey (Association's Survey);
 - notice of all Agendas and Minutes of Association committee meetings; and
 - a list of all Association committee members as updated throughout the Special Charge term.

Starting up

Step 1	Establish an incorporated Business Association.	Business Association	
Step 2	Business Association in writing to detail the level of support for the special rate/charge scheme amongst traders with accompanying signatures. Council to write to property owners on behalf of the Association to gauge support. In addition, request funding from Council to commence business plan process.	Business Association	
Step 3	Business Association in collaboration with consultant to develop and adopt Business Plan.	Business Association	
Step 4	Business Association to inform Council in writing of interest to implement special rate/charge scheme (including expected amount to be raised, geographic boundaries, incorporation documents etc).	Business Association	-
Step 5	Businesses and property owners to be surveyed by Council to determine level of support for special rate/charge scheme.	Council	2 to 4 weeks

Assistance for the Preparation of a Business Plan

Council may provide funding of up to \$15,000 for the preparation or revision of a business plan for a retail/commercial precinct or centre where the ownership of property in the precinct or centre is predominantly comprised of individual land titles.

Step 5]	Report to Council for approval of intention to proceed with special rate/charge resolution.	Council	4 weeks
Step 6	If Council resolves to commence the statutory process, a public notice will appear in the local paper and Council's website. Submission under section 223 must give 28 day notice. Within three days Council is to send letters to all affected businesses and property owners informing of intention to raise special rate/charge scheme. Businesses and property owners have 28 days to make a submission and 28 days to make an objection. Objectors must provide declaration indicating payment responsibility of the proposed rate/charge.	Council	4 weeks
Step 7	Responses assessed. Council will review the scheme and determine either to proceed or not to proceed with the proposal, or to recommend a variation to the special rate/charge scheme proposal. If Council receives objections from more than 50%, the special rate/charge scheme will not proceed. The Business Association will be advised of the outcome.	Council	1 to 5 weeks
Step 8	Report to Council seeking resolution to introduce special rate/charge scheme.	Council	4 weeks
Step 9	Council to send letters to all affected businesses and property owners informing of resolution of Council to raise special rate/charge. Affected persons liable to pay the rate have 30 days to appeal to the Victorian Civil and Administrative Tribunal (VCAT).	Council	4 weeks
Step 10	If there are no appeals to VCAT, Council will initiate special rate/charge scheme.	Council	Total Estimated Time 23 to 31 weeks
Step 11	If appeals are received by VCAT, the timeline could be extended by up to 12 weeks or more.	VCAT	Total Estimated Time 35 to 43 weeks

Further information



Policy for Special Rate/Charge Schemes in Retail/Commercial Precincts or Centres

April 2014

Prepared by the Business & Economic Development Unit
Whitehorse City Council

Questions?