

OVERSTRAND MUNICIPALITY



SPECIAL RATING AREA POLICY

Approved by Council

29 May 2019

Implementation date

1 July 2019

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OVERSTRAND MUNICIPALITY – SPECIAL RATING AREA POLICY

1. DEFINITIONS

In this Policy words or expressions shall bear the meaning assigned to them and, unless the context otherwise indicates –

"additional rate"	means an additional rate contemplated in sections 19(1) (d) and 22(1) (b) of the Property Rates Act and in section 12(2) of the By-law;
"applicant"	means any owner who makes an application for the determination of a special rating area in accordance with Chapter 1 of the By-law, or if a management body is established in terms of section 10 thereof, any reference to "the Applicant" means the management body;
"business plan"	means a motivation report, implementation plan and term budget as contemplated in section 10 of the By-law;
"By-law"	means the Overstrand Municipality: Special Rating Area By-law;
"CFO"	means the Chief Financial Officer;
"Companies Act"	means the Companies Act, 2008 (Act No. 71 of 2008), as amended or replaced;
"Council"	means the Council of the Overstrand Municipality
"majority"	means the majority of property owners as contemplated in paragraphs 6.5 and 6.6 of the Policy;
"management body"	means the management body of a special rating area to be established in accordance with the provisions of section 11 of the By-law; "owner" has the meaning assigned to it in section 1 of the Property Rates Act;
"non-profit company"	defined as a non-profit company with members as defined in section 1 of the Companies Act No 71 of 2008
"Policy"	means the Policy for the determination of special rating areas, or any other policy adopted by the Council in relation to special rating areas, as in force from time to time;
"Property Rates Act"	means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);
"rateable property"	has the meaning assigned to it in section 1 of the Property Rates Act;
"special rating area" or "SRA"	means a special rating area approved by the Council in accordance with the provisions of section 22 of the Property Rates Act;
"steering committee"	means the steering committee of a special rating area to be established in accordance with the provisions of paragraph 9.1.1 of the Policy;
"term budget"	means the budget of the management body contemplated in section 6 of the By-law.

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2 INTRODUCTION

- 2.1 This Policy for the establishment of special rating areas must be read together with the Property Rates Act and the By-Law.
- 2.2 All words and phrases defined in the Property Rates Act and the By-law have the same meaning in this Policy.
- 2.3 In the event of any conflict between the provisions of the By-law and the provisions of this Policy, the By-law prevails.
- 2.4 The Policy should at all times be read together with the Rates Policy of Overstrand Municipality.

3 AIM OF THE POLICY

This Policy aims to –

- 3.1 set out Council's position on special rating areas and the factors that will influence Council's decision whether or not to determine a particular special rating area;
- 3.2 provide guidance to members of the local community and to decision- makers within the Overstrand Municipality in relation to the establishment of special rating areas;
- 3.3 strike an appropriate balance between facilitating self-funded community initiatives that aim to improve and/or upgrade neighborhoods by making use of a non-profit company ("**NPC**") structure as contemplated in the Companies Act, which is referred to in the By-law as "the management body"; and ensure commitment to good, fair and transparent governance by the management body as defined in the By-law, by implementing a transparent process when appointing service providers to improve and/or upgrade the special rating area in the public areas and ensuring that these improved and/or upgraded services are not provided for private properties.

4 EXCLUSION

This Policy does not apply to privately-owned property developments.

5 POLICY STATEMENT

- 5.1 The special rating area model is based on international best practice. It is aimed at preventing the degeneration of towns and the consequential urban decay, and facilitating their upliftment, economic growth and sustainable development.
- 5.2 The purposes of a special rating area is to –
 - 5.2.1 enhance and supplement the **municipal services** provided by the Overstrand Municipality;
 - 5.2.2 facilitate investment in the special rating area;
 - 5.2.3 facilitate a co-operative approach between the Municipality and the private sector in the provision of municipal services;
 - 5.2.4 halt the degeneration and facilitate the upliftment of distressed business and mixed-use areas; and

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- 5.2.5 promote economic growth and sustainable development and in this way assist the Council in the fulfilment of its objects and developmental duties as set out in its Integrated Development Plan ("IDP").
- 5.3 The Overstrand Municipality recognises special rating areas as a potential tool for assisting it to fulfill its constitutional and statutory obligations to allow property owners within a geographical area to improve and upgrade their area by means of a property rate in addition to the standard property rate.
- 5.4 The Overstrand Municipality does not see its role as advocating or initiating the establishment of special rating areas, but rather facilitating the process with guidance and advice and assisting and helping to capacitate management bodies

6 FACTORS CONSIDERED WHEN DETERMINING A SPECIAL RATING AREA

The Council will consider determining a special rating area where the requirements of section 22 of the Property Rates Act are complied with, including that-

- 6.1 the purpose of the special rating area is to allow an additional rate to be levied on property in the defined area to raise funds for improving or upgrading the area;
- 6.2 the special rating area will not be used to reinforce existing inequities in the development of the Overstrand's area of jurisdiction;
- 6.3 the determination of the special rating area is consistent with the IDP;
- 6.4 residential special rating areas mean an area in which more than 40% (forty percent) of the rates base value consists of Residential Property as defined in the Municipalities Rates Policy;
- 6.5 any residential special rating area must comply fully with the provisions of the By-law, save that, with reference to the majority support, the applicant must provide written proof to the Council that owners of rateable property within the boundary of the special rating area who own not fewer than 50% (fifty percent) plus 1 in number of such properties, approve the formation of the special rating area;
- 6.6 any non-residential special rating area must comply fully with the provisions of the By-law, save that, with reference to the majority support, the applicant must provide written proof to the Council that owners of rateable property within the boundary of the special rating area who own not fewer than 50% (fifty percent) plus 1 in number of such properties, approve the formation of the special rating area;
- 6.7 the procedural requirements of section 22 of the Property Rates Act as well as the By-law and the Policy, are complied with, including the community consultation requirement, as determined by the CFO;
- 6.8 the proposed improvement or upgrade has been clearly and fully defined;
- 6.9 the proposed improvement or upgrade can be clearly and logically linked to a geographical area, the boundaries of which can be clearly determined;
- 6.10 there is evidence that it will be financially viable to use a special rating area to raise funds for the proposed improvement or upgrade;
- 6.11 Overstrand is satisfied with the institutional arrangements proposed in respect of the special rating area; and
- 6.12 ultimately, the decision whether or not to determine a special rating area rests with the Council in its sole discretion.

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7 **APPLICABILITY OF THE OVERSTRAND MUNICIPALITIES RATES POLICY AND OTHER POLICIES**

- 7.1 The Overstrand Municipality's rates policy applies with the necessary changes to this Policy. In particular, and without limiting the generality of the afore-going, the exemptions, rebates and reductions set out in the Rates Policy apply with the necessary changes in relation to the levying of an additional rate for special rating area purposes.
- 7.2 Notwithstanding the provisions of paragraph 7.1 above, when the Municipality grants a partial rebate as set out in the Rates Policy, the relevant property owner will be granted a full (100%) rebate in relation to the additional rate.
- 7.3 Other policies approved by the Council apply with the necessary changes to the collection of additional rates in terms of the Policy, the By-Law and section 22 of the Property Rates Act, including, but not limited to, the Overstrand Municipality Credit Control and Debt Collection Policy.

8 **PROCESS**

This Policy sets out –

- 8.1 the institutional arrangements for special rating areas (paragraph 9);
- 8.2 the establishment principles (paragraph 10);
- 8.3 the information to be included in the business plan which needs to be submitted to the Overstrand Municipality in order to motivate a request for determination of a special rating area (paragraph 11); and
- 8.4 the annual requirements for Special Rating Areas (paragraph 12);
- 8.5 the amendment and/or extension of term for special rating area (paragraph 13 and 14);
- 8.6 the dissolution requirements which must be followed (paragraph 15);
- 8.7 the financial arrangements (paragraph 16).

9 **INSTITUTIONAL ARRANGEMENTS**

Section 22 of the Property Rates Act is not prescriptive as to the structural arrangements which need to be put in place to administer a special rating area. The structural arrangements that will be supported by the Overstrand Municipality are the following:

9.1 **Administration by a NPC**

- 9.1.1 The ratepayers within the special rating area must establish and participate in an appropriate structure to carry out planning, contracting, financial control and administrative functions within the special rating area, in order to manage and implement the services and upgrades.
- 9.1.2 This structural arrangement does not entail ratepayers *setting* the additional rate, which under law can only be done by the Council.

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- 9.1.3 Councilors who are actively involved in pursuing and promoting the establishment of a special rating area must recuse themselves when Council considers the application for establishment of a special rating area.
- 9.1.4 Amongst other reasons, because funds collected by government are placed in the hands of the private sector through this structural arrangement, the requirements set out in this Policy must be met.
- 9.1.5 The functions of the structure would include:
- (a) determining the funding required each year (paragraph 16.2);
 - (b) appointing contractors to effect the improvement/s or upgrade/s and
 - (c) receiving the additional rate collected by the Overstrand Municipality and expending the funds in accordance with the approved business plan.
- 9.2 **Structural requirements:**
- 9.2.1 Before Overstrand Municipality will consider allowing ratepayers in a special rating area to carry out administrative and other functions in relation to the area, the Steering Committee must establish a non-profit company ("**NPC**") in terms of the Companies Act for that purpose.
- 9.2.2 The inaugural memorandum of incorporation ("**MOI**") of the NPC must be aligned with the prescribed format determined by the CFO; and any amendments thereto must be approved by the CFO;
- 9.2.3 The NPC must be managed in terms of the Companies Act, and must also comply with any other legislation as a result of the financial connection to Council;
- 9.2.4 The NPC must have at least 3 (three) directors, each with specific portfolio(s) aligned with the business plan;
- 9.2.5 the Executive Mayor will appoint councilor(s) as director(s) and alternate director(s) to the board of the management body in accordance with sections 11(4) and 11(5) of the By-law. The director(s) appointed by the Executive Mayor will not have the powers and duties of directors as set out in the Companies Act and the management body's MOI;
- 9.2.6 the NPC must give a written notice to all the affected property owners within the special rating area of the intention to hold a members meeting within six months of the establishment of the NPC and thereafter an annual general meeting ("**AGM**") (paragraph 12.2) on the date stated in the notice by advertising in one English and one Afrikaans daily newspaper and must also give notice in a community (local) newspaper to accommodate other official languages where applicable; and
- 9.2.7 The purpose of the meetings referred to in paragraph 9.2.6 will be to, amongst other items on the agenda:
- (a) appoint directors, other than the director(s) appointed in terms of paragraph 9.2.5;
 - (b) amend the NPC's MOI if required and with prior written consent of the CFO; and
 - (c) approve the following year's budget and implementation plan (paragraph 16.2).

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10 ESTABLISHMENT PRINCIPLES OF A SPECIAL RATING AREA

The process for establishing special rating areas as set out in Chapter 1 of the By-law, must be followed.

10.1 Initiation Phase

10.1.1 The applicant must form a steering committee that is representative of property owners within the proposed special rating area.

10.1.2 The Steering Committee must keep a comprehensive portfolio of evidence of the establishment process.

10.1.3 The Steering Committee must meet with the CFO before commencing with the establishment process to ensure that the special rating area is the appropriate vehicle.

10.1.4 All documents relating to the establishment process must be approved by the CFO before circulating them to the public.

10.1.5 After the Steering Committee confirms in writing that it will engage in the pursuit of establishing a special rating area it must supply the Overstrand Municipality with a map depicting the boundaries of the special rating area.

10.1.6 The Overstrand Municipality will extract a property database which the Steering Committee, with the assistance of the Municipality, must verify as correct. Any anomalies must be reported to the Municipality for remedial action.

10.1.7 All properties except municipal properties predominantly used for municipal purposes or properties exempted from paying property rates or receiving partial rates relief (paragraph 7.1) will form part of the property database of the proposed special rating area.

10.1.8 After the Overstrand Municipality has prepared a total arrears profile of the area and is satisfied with the outcome thereof the Steering Committee may proceed with the establishment process.

10.1.9 The Steering Committee will be required to conduct an urban management survey (only one survey per property owner) of not less than 20% of properties in the database (proportional split in terms of the usage code is required). In addition a random sample of people within the area, which is equal in number to not less than 5% of the properties in the database, is also required. Where a reduction in the number of survey forms is required it may be motivated for consideration by the CFO.

10.1.10 The Steering Committee must consult with the respective Overstrand Municipality Directorate(s) regarding the current service(s) provided and the levels thereof as well as the SRA anticipated service(s) and level thereof.

10.1.11 The Steering Committee must compile a business plan in accordance with the provisions of paragraph 11 of this Policy.

10.2 First Public Meeting

10.2.1 The public meeting must be conducted in accordance with section 5 of the By-law.

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10.3 Obtaining Support

- 10.3.1 Support may only be obtained after the public meeting and on the consent form provided by the Overstrand Municipality.
- 10.3.2 All support forms must be filed and cross-referenced to the property database in terms of paragraph 10.1.6 of the Policy to verify the accuracy thereof.
- 10.3.3 Any property owner that wants to object to the establishment of a special rating area or to the provisions of the business plan can do so by indicating it on the consent form. The objector will be required to submit an objection letter once an application for the establishment of a special rating area is submitted to Council.

10.4 Application

- 10.4.1 An application must be submitted in terms of paragraph 11 of this Policy.
- 10.4.2 The application must be advertised in terms of paragraph 9.2.6 and also set a date for a second public meeting to occur not more than twenty days or less than seven days before the objection period closes.
- 10.4.3 Prior to submitting an application the Steering Committee will be required to set up a website that displays the following:
- application letter;
 - business plan;
 - urban management perception report;
 - public meeting presentations and minutes;
 - By-law;
 - Policy;
 - SRA frequently asked questions;
 - notices; and
 - blank consent / objection form.
- 10.4.4 The special rating area application must be submitted by 30 September of the financial year preceding the establishment of the special rating area. The CFO may extend this date if a properly motivated request is received. This will depend on Council's ability to accommodate the late application within the budget process.

10.5 Objections

- 10.5.1 Consents and objections will be considered only if they are submitted to Council by the last day specified in the application notice.
- 10.5.2 Property owners objecting to the establishment of a special rating area in terms of paragraph 10.3.3 must do so in writing and include a motivation for their objection.
- 10.5.3 The Steering Committee must engage with all the objectors and provide them and Council with minutes of these meetings. The objector/s will be allowed to respond to the minutes.

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10.5.4 Any property owner who wants to make oral representations for submission to Council in terms of section 7(4) of the By-law will be assisted by an official to document this for inclusion in the report to be considered by Council.

10.6 Inaugural Phase

10.6.1 The process and appointment of all service providers must be communicated to the property owners on the NPC's website and in newsletters.

10.6.2 The application form to become a member of the NPC must also be available on the website.

10.6.3 Any special rating area that is approved more than nine months prior to the effective date may:

10.6.3.1 delay the implementation of the special rating area and commence with year two of the business plan. This will imply that the term is effectively reduced by one year; or

10.6.3.2 implement the original business plan.

11 BUSINESS PLAN CONTENT

The business plan comprises of the following:

- a motivation report;
- an implementation plan; and
- a term budget.

11.1 Motivation report

The motivation report must contain the following:

11.1.1 Introduction:

11.1.1.1 an executive summary of the improvement or upgrade proposed for the special rating area as set out in the business plan;

11.1.1.2 an explanation of how the proposed improvement or upgrade is linked to the geographical area of the proposed special rating area;

11.1.1.3 an explanation of why the proposed special rating area will not reinforce existing inequities in the development of the Overstrand Municipality;

11.1.1.4 an explanation of how the special rating area, if determined, will be consistent with the Overstrand Municipalities IDP as per the Service Departments' business plans;

11.1.1.5 an explanation of the institutional arrangements proposed in relation to the special rating area;

11.1.2 Vision;

11.1.3 Mission;

11.1.4 Goal;

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11.1.5 A diagram clearly indicating the boundaries of the proposed special rating area;

11.1.6 Proposed management structure:

- composition of special rating area board including allocation of portfolios; and
- operational arrangements;

11.1.7 Services:

11.1.7.1 Service providers to be appointed as contemplated in paragraphs 2.1.4 and 9.6.1.

11.1.8 Financial Impact:

- provide details regarding the calculation of the additional rate;
- provide details of criteria to qualify for exemption from paying the additional rate as per paragraph 10.1.7;

11.1.9 A list of all rateable properties within the proposed special rating area, contact details of all property owners and the value of each property as set out in the Council's general valuation roll. Differentiation between categories of properties, as provided for in section 8 of the Property Rates Act, must be considered;

11.1.10 Proof of the consent of the majority of the members of the local community in the proposed special rating area who will be liable for paying the additional rate;

11.1.11 Proof of the notice of the public meeting or meetings contemplated in the By-law;

11.1.12 Minutes of the public meeting or meetings; and

11.1.13 Compilation date.

11.2 **Implementation plan**

The implementation plan is a schedule of goals to implement improvements or upgrades as per the motivation report and must at least address the following:

11.2.1 Milestones;

11.2.2 Tasks per milestone;

11.2.3 Start and finish date per task;

11.2.4 Assign responsibility per goal, milestone & task; and

11.2.5 Performance indicators per milestone.

11.3 **Term budget**

11.3.1 The budget for the proposed improvements or upgrades must at least address the following:

11.3.1.1 an annual budget per line item commencing on 1 July of the first year and ending on 30 June of the last year of the term; and

11.3.1.2 a budget split for the provision of improvements or upgrades between the different categories of properties.

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- 11.3.2 subject to the provisions of the Property Rates Act, the additional rate in any category of property must not exceed 25% of the municipal property rate. Any deviation must be fully motivated to Council for consideration.

12. ANNUAL REQUIREMENTS

- 12.1 The NPC must confirm the property data base which the Steering Committee must verify as correct or report anomalies to the Overstrand Municipality for remedial action.
- 12.2 The NPC must hold its AGM before 31 December as per the MOI requirements.
- 12.3 Within two months of the end of each financial year the NPC must provide the CFO with its Audited Financial Statements for the immediately preceding year.
- 12.4 Within three months after the AGM the NPC must provide Council with its audited Financial Statements for the immediately preceding year and an Annual Report on its progress in carrying out the provisions of the Business Plan in the preceding year to improve and upgrade the Special Rating Area.
- 12.5 The NPC must submit an annual budget and implementation plan for comment by the CFO before approval at the AGM (paragraph 16.2), and ensure that -
- 12.5.1 the quantum of financial reserves is not less than two months of revenue received from the Overstrand Municipality in terms of the approved budget per SRA except if these funds have been duly allocated to a project;
- 12.5.2 the implementation plan is aligned with the proposed budget.
- 12.6 The submission of the annual budget and implementation plan as referred to in paragraph 12.5 will be subject to approval by Council during the municipalities annual budget process.
- 12.7 The NPC must by 31 January each year provide the CFO with a mid- year performance scorecard based on the activities set out in the implementation plan.
- 12.8 The NPC will within one month after the AGM provide the CFO with draft minutes of the AGM to ensure compliance with the legal requirements.

13. AMENDMENT TO THE BUSINESS PLAN

- 13.1 In the event that a NPC seeks to amend the boundaries of the SRA and/or the business plan content then the procedures set out in section 14 of the By-law must be followed and submitted by 30 September.
- 13.2 The following factors, although not limited to, must be addressed in the motivation:
- explanation of impact on costs, budget and implementation plan expectations;
 - cross subsidisation by existing members;
 - fairness and equity;
 - affordability and sustainability of the existing SRA;
 - intention of the legislation prescribing that all property owners; must be allowed to participate in the formation of a SRA;

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- priorities of the new area may differ from the existing SRA priorities; and
- arrears profile

13.3 The boundary changes must not affect the vested rights of existing property owners as per the Business Plan.

13.4 Boundary changes are subject to the following criteria:

13.4.1 Obtaining by special resolution the support from existing NPC members at a members meeting before expansion is pursued;

13.4.2 Determining the profile of the new total SRA as it could change from non-residential to residential and vice versa;

13.4.3 Obtaining the required majority support from the property owners in the new area only, based on the determination referred to in paragraph 13.4.2.

13.4.4 Any geographical boundary changes must be continuous with the existing SRA geographical area.

13.5 Property owners in the new area must follow the establishment process as per Chapter 1 of the By-law.

14 EXTENSION OF THE SRA TERM

In the event that a NPC seeks to extend the term of the special rating area for a further period then the procedures set out in section 15 of the By-law must be followed.

15 DISSOLUTION

The special rating area may be dissolved by resolution of the Council in terms of section 16 of the By-law. Thereafter the management body may be wound up in terms of the provisions of section 16 of the By-law and the NPC's MOI.

16 FINANCIAL CONTROL

16.1 As stated in the By-law, the amount of any additional rate levied in a special rating area is determined by Council. The additional rate is imposed by the Council, is a debt owing to the Overstrand Municipality and is payable and collected in the same manner as other property rates imposed by the Council.

16.2 The NPC must submit an annual budget as approved at an AGM or Special General Meeting ("**SGM**") to the Overstrand Municipality by 31 January, with appropriate motivation including an implementation plan for the next financial year, and the Council will consider the recommendation during its budgeting process.

16.3 Before the Overstrand Municipality will pay over any additional rate collected to the NPC, the NPC and the Overstrand Municipality must have concluded a written finance agreement regulating, amongst other things:

16.3.1 the mechanisms and manner of payment;

16.3.2 how the additional rate is to be held by the NPC;

16.3.3 any parameters relating to expenditure; and

16.3.4 any obligations on the NPC to take out and maintain appropriate insurance.

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- 16.4 The CFO may request a forensic audit should he deem it necessary.
- 16.5 The CFO may request a special board meeting.
- 16.6 The CFO may amend the percentage retained as a provision for bad debt for SRA's with high arrears, as contemplated in the Finance Agreement concluded between the Overstrand Municipality and each SRA, should he/she deems it necessary.

17 COMMENCEMENT AND IMPLEMENTATION

- 17.1 Implementation of this Policy commences on **1 July 2019**.
- 17.2 Where the Overstrand Municipality is legally empowered to do so, requirements set out in this Policy may be imposed as conditions attached to the determination of a special rating area.
- 17.3 This Policy and its implementation must be reviewed annually.

18 COSTS

Unless otherwise agreed by the Municipal Manager or his/her nominee, the Overstrand Municipality shall not be liable for any costs incurred by ratepayers within the relevant proposed special rating area in respect of the implementation of the steps set out in this Policy and in the By-law.

19 SHORT TITLE

This policy will be referred to as the **Special Rating Area Policy of the Overstrand Municipality**.

POLICY SECTION:	SENIOR MANAGER: REVENUE
CURRENT UPDATE:	29 MAY 2019
PREVIOUS REVIEW:	30 MAY 2018
PREVIOUS REVIEW:	31 MAY 2017
APPROVAL BY COUNCIL:	25 MAY 2016