

OVERSTRAND MUNICIPALITY
SPECIAL RATING AREA BY-LAW

To provide for the establishment of special rating areas; to provide for additional rates; and to provide for matters incidental thereto.

BE IT ENACTED BY OVERSTRAND MUNICIPALITY AS FOLLOWS: -

1. DEFINITIONS

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

“**additional rate**” means an additional rate contemplated in section 19(1) (d) and 22(1) (b) of the Property Rates Act in section 12(2) of this By – law;

“**applicant**” means any owner who makes an application for the determination of a special rating area in accordance with the provisions of Chapter 1, or if a management body is established in terms of section 10 any reference to “the Applicant” means the management body;

“**business plan**” include a motivation report, implementation plan and term budget as contemplated in section 6 of the By – law;

“**CFO**” means the Chief Financial Officer of Overstrand Municipality, or his or her nominee;

“**Council**” means Council of Overstrand Municipality;

“**limited special rating area**” means a limited special rating area approved by Council in terms of section 9;

“**Companies Act**” means the Companies Act, 2008 (Act 71 of 2008), as amended or replaced;

“**Implementation plan**” means an Implementation Plan as contemplated in section 22 of the Property Rates Act;

“**Majority**” means the majority of property owners as contemplated in section 22 of the Property Rates Act and as may be amplified in the Policy;

“**Management body**” means the management body of a special rating area to be established in accordance with the provisions of section 11;

“**Owner**” has the meaning assigned to it in section 1 of the Property Rates Act;

“**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 Municipality Property Rates Act;

“**rateable property**” has the meaning assigned to it in section 1 of the Property Rates Act;

“**special rating area**” means a special rating area approved by the Council in accordance with the provisions of section 22 of the Property Rates Act and section 8 of the By – law.

“**term budget**” means the budget of the management body contemplated in section 6 of the By – law.

2. INTERPRETATION

In the event of any conflict with the Afrikaans and isiXhosa texts the English version prevails.

3. DETERMINATION OF SPECIAL RATING AREAS

Overstrand Municipality may by resolution of Council determine special rating areas in accordance with the provisions of section 22 of the Property Rates Act.

4. APPLICATION

- (1) Any owner located within the area of jurisdiction of Overstrand Municipality and who owns property within the proposed special rating area, may lodge an application to the Council for the determination of a special rating area.
- (2) All cost incurred by the applicant in respect of the establishment of a special rating area shall be for his or her own account, provided that after implementation of the implementation plan the management body may reimburse the applicant for some or all of those cost.
- (3) Any application contemplated in subsection (1) must –
 - (a) be in writing and be in the form as the CFO may determine;
 - (b) be submitted not more than nine months after the date on which the public meeting referred to in section 5 is held, or if a public meeting is held as provided for in section 6(2), nine months after the date of the second public meeting;
 - (c) be accompanied by –
 - (i) the business plan;
 - (ii) the written 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.
 - (iii) payment of such fee as the Council may determine.

5. PUBLIC MEETINGS

- (1) An application for the determination of a special rating area must be preceded by the holding of a public meeting.
- (2) The purpose of the public meeting is to enable the applicant to consult with the property owners who will be liable for paying the additional rate within the proposed special rating area with regard to the proposed boundaries of the area and the improvement or upgrading of the area.

- (3) Prior to the holding of the public meeting, the applicant must –
- (a) Give notice in a manner approved by the CFO in terms of this By – law to all property owners of rateable property, who will be liable for payment of the additional rate, of the applicants intention to apply for the determination of a special rating area.
 - (b) In the notice referred to in subsection 3 (a), give notice of a public meeting, which notice must -
 - I. state the purpose of such meeting; and
 - II. contain details of the place, date and time when such meeting is to be held.
- (4) The public meeting must be held not less than seven days and not more than 30 days after the date of the notice.
- (5) The public meeting must be held at such place, date and time as stated in the notice, provided that it must be held at a place which is within the boundaries of the proposed special rating area unless the CFO approves another venue in writing before the public meeting is held.
- (6) The public meeting must be chaired by a suitable qualified and experienced person appointed by the CFO.
- (7) Interested persons, at the public meeting, be –
- (a) Furnished with all the relevant information relating to the proposed special rating area, including the information to be set out in the business plan and;
 - (b) given an opportunity to ask questions, express their views and make representations.

6. BUSINESS PLAN

- (1) Any application for the establishment of a special rating area must include a motivation report an implementation plan and a term budget covering the period commencing on 1 July of a year and ending on 30 June of the fifth year, or covering such lesser period as may be determined by the CFO.

- (2) If the motivation report of the implementation plan are materially amended, as determined by the CFO, after the public meeting referred to in section 5, the applicant must call a second public meeting for the approval of the special rating area as amended.
- (3) The provision of section 5 applies with the necessary changes to the second public meeting.

7. ADVERTISING OF APPLICATIONS AND OBJECTIONS

- (1) The applicant must within 14 days after the application is lodged in accordance with section 4, or within such period which the CFO may approve -
 - (a) cause a notice of the application to be published in a manner approved by the CFO and;
 - (b) either before or up to seven days after the date of publication of the notice referred to in subsection (1) (a), give written notice of the application to all owners within the proposed special rating area, who will be liable for payment of the additional rate, such notice to be given by pre – paid registered post, hand delivery or in any other manner approved or in writing by the CFO.
- (2) Every notice contemplated in terms of subsection (1) must state that written objections to the determination of a special rating area or the provision of the business plan (Refer to the definition of a business plan and section 6 of the by – law) may be lodged with the Council by the date specified in the notice, which shall not be less than 30 days after the date of publication in terms of subsection (1)(a), and must state were the documentation specified in subsection (5) will be available for inspection.
- (3) Any owner of ratable property who will be liable for paying the additional rate may submit written objections to the determination of the special rating area, which objections must be received by the Council not later than the date stipulated in the notice referred to in subsection (1).

- (4) An application and any objector to the application who owns property within the proposed special rating area may make oral representation, which will be recorded in writing, for submission to Council.
- (5) The application, including the business plan and all objections must be available for inspections at the office of Overstrand Municipality and at a venue determined by the CFO within the proposed special rating area, for a period referred to in subsection (2).

8. DECISION

- (1) After the provision of section 4 to 7 have been complied with, the Council must, at a meeting of the Council held 90 days after the last date for the submission of objections in accordance with subsection 7(2), consider the application, and –
 - (a) determine a special rating area which must be implemented in accordance with the business plan, which include the motivation report, implementation plan and term budget;
 - (b) determine a special rating area with such amendments or conditions as the Council considered to be in the public interest;
 - (c) determine a special rating area in respect of a limited area in terms of section 9;
 - (d) refuse the application, in which event the Council must, within 30 days, furnish the applicant with written reasons for not approving the determination of a special rating area; or
 - (e) refer the application back to the applicant for amendments in such manner as the Council may direct.
- (2) If an application is refused by Council in accordance with the provisions of subsection 1(d) or referred back to the applicant in accordance with the provisions of subsection (1) (e), the applicant may, within 6 months of the Council's decision, re – apply to the Council for determination of the special rating area, provided that such re – application has been appropriately amended in the light of the reasons for refusal or referral, as the case may be.

- (3) If the business plan is amended in any material respect at any time before the determination, the Council may require that the application be re – advertised in accordance with the provisions of section 7, with the necessary changes.

9. DETERMINATION OF A LIMITED SPECIAL RATING AREA

If an application in terms of section 4 is not accompanied by 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 in writing in the proposed special rating area as required by section 4(3)(c), but the applicant can demonstrate to the satisfaction of the Council, that -

- (a) There are such confirmations from owners or rateable properties in a limited geographical area within the proposed special rating area that would meet the requirements of section 4(3) (c) if they were to be applied to that area; and
- (b) The level of services to be provided will not be reduced and the budget will be reduced accordingly as a result of the provision of those services in the limited area alone, as compared to the provision of those services in the whole of the special rating area,

Then the Council may, subject to the other requirements of this By – law, determine a limited special rating area.

CHAPTER 2

SPECIAL RATING AREAS, STRUCTURES AND FINANCES

10. COMMENCEMENT OF THE BUSINESS PLAN

Once the Council has approved the establishment of the special rating area, the business plan may only be implemented after the management body has been established in accordance with section 11.

11. ESTABLISHMENT, COMPOSITION, POWERS, AND DUTIES OF THE MANAGEMENT BODY

- (1) The applicant must cause the establishment of a management body for the purposes of implementing the provisions of the business plan.
- (2) The management body must be a non – profit company with members as prescribed in schedule 1, subsection 4(2) of the Amended Companies Act.
- (3) Overstrand Municipality shall monitor compliance by the management body with the applicable provisions of this By – law, any guidelines or policies adopted by Overstrand Municipality and any agreements entered into with the management body and Overstrand Municipality.
- (4) The Council must nominate the relevant ward councilor and one other person, as an alternate representative to attend and participate, but not vote, at the meetings of the management body.
- (5) Any Councilor appointed by the Executive Mayor must -
 - (a) not have all the powers and duties of directors of companies as set out in the Companies Act and the memorandum of incorporation of the management body;
 - (b) be deemed to have vacated the position should such observer no longer serve as councilor and such observer shall be replaced.
 - (c) not chair the board of the management body or any committee or sub – committee of the board.
- (6) Employees of Overstrand Municipality may only serve as representatives of the Municipality on the management body if nominated to do so by the CFO in terms of section 13(b)(2) of this By-Law.
- (7) Within two months after the receipt of the first payment of the additional rate, the management body must begin carrying out the provisions of the implementation plan, as included in the business plan.

- (8) Within three months after its Annual General Meeting, the management body must provide the CFO with –
 - (a) Its audited financial statements for the immediately preceding year; and
 - (b) 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.

- (9) Within two months after the Annual General Meeting, the management body must provide the Finance Portfolio Committee with –
 - (a) Its audited financial statements for the immediately preceding year; and
 - (b) An annual report on its progress in carrying out the provisions of the implementation plan in the preceding year to improve and upgrade the special rating area.

12. FINANCES

- (1) The financial year of the management body must coincide with the financial year of the Council.

- (2) Where a special rating area has been determined, the Council must levy in accordance with the provisions of the Property Rates Act, a property rate in addition to the rates that it already charged on the owners of ratable property in the special rating area for the purposes of realizing the business plan, provided that the Council may in terms of the Local Government Municipal Property Rates Act, 2004 (Act No. 6 of 2004), Rates Policy, Customer Care, Credit Control and Debt Collection Policy, exempt or rebate the indigent, senior citizens, disabled persons or any other category or resident.

- (3) When determining the additional rate referred to in subsection (2), the Council may give consideration to imposing differential additional rates on one or more of the categories set out in section 8 of the Property Rates Act.

- (4) The additional rate due in terms of this By – law is a debt due to the Council and is payable and must be collected in the same manner as other property rates imposed by the Council.

- (5) The Council may, for purposes of carrying out the provisions of the business plan of special rating area and subject to section 67 of the Local Government Municipal Finance

Management Act, 2003 (Act No. 56 of 2000), make payment to the management body of a special rating area.

(6) The payment contemplated in subsection (5) is conditional upon the conclusion of a finance agreement to be entered into between Council and the relevant management body, and such agreement must regulate, among other things –

(a) the mechanisms and manner of payment; and

(b) terms on which payment to the relevant management body is to be made.

(7) Subject to the provisions of its memorandum and articles of association, the management body is entitled to raise its own funds through commercial activities, donations or any other lawful means.

(8) The Council, may for the purpose of this By – law, determine and impose on the management body an administrative charge.

13. THE ROLE OF THE CFO

In addition to the other responsibilities and obligations of the CFO as set out elsewhere in this By – law, the CFO must –

(a) Establish separate accounting and other record-keeping systems regarding the revenue generated by the additional rate and the improvement and upgrading of the special rating area.

(b) Monitor compliance with the applicable legislation, including this By – law and the Policy by –

I. Receiving and considering the audited financial statements and reports regarding the carrying out of duties laid out in the business plan;

II. If he or she elects to do so, nominate representatives to attend and participate but not vote at meetings of the management body.

CHAPTER 3

AMENDMENT TO THE BUSINESS PLAN AND EXTENTION OF THE SPECIAL RATING AREA TERM

14. AMENDMENT OF BUSINESS PLANS

- (1) A business plan, including the geographical boundaries of the special rating area, may be amended by Council on written application by the management body at any time after the formation of the special rating area.
- (2) The Council may approve an application for an amendment referred to in subsection (1) where the Council considers it not likely to materially affect the rights or interest of any owner, provided that the Council may require the management body to cause a notice of the application for such amendments to be published as approved by the CFO.
- (3) The Council may only approve an amendment in terms of subsection (1), with the changes required by the context, in accordance with the provisions of Chapter 1, which the Council considers is likely to –
 - (a) materially affect the rights or interest of any person;
 - (b) affect the approved budget for the special rating area; or
 - (c) change the boundaries of the special rating area.

15. EXTENTION OF SPECIAL RATING AREA TERM

A management body must, if it elects to extent the term of the Special Rating Area for a further period, on or before 1 September in the year before in which the business plan is due to terminate, submit an application to Overstrand Municipality for approval of the extension of the term of the business plan, provided that -

- (a) The extension of the Special rating area term plan may only be approved by the Council in accordance with the provisions of Chapter 1, with the changes required by the context, and the Council may, for good reason, on written application by the management body, exempt the management body from complying, or condone, non – compliance, with any such provision.
- (b) The provisions of section 14 shall apply to any amendment of the business plan which has been extended in terms of this section.

CHAPTER 4

DISSOLUTION OF A SPECIAL RATING AREA

16. DISSOLUTION AND WINDING UP

- (1) The Council may dissolve a special rating area –
 - (a) Upon written application signed by the majority of owners within the boundaries of the special rating area who are liable for paying the additional rate;
 - (b) For any good cause, after prior consultation by the CFO with the management body or the community.
- (2) Upon dissolution of the special rating area by the Council, any director, including the director(s) or alternate director(s) appointed by the Executive Mayor, may cause the management body to be wound up in terms of the Companies Act.
- (3) Upon the winding up of a management body, the entire net value of the management body, including its net assets remaining after the satisfaction of all its liabilities, shall be disposed of in terms of the relevant provisions of the Companies Act and the memorandum of incorporation of the management body

CHAPTER 5

MISCELLANEOUS PROVISIONS

17. SHORT TITLE AND COMMENCEMENT

- (1) This By – law is called the Overstrand Municipality: Special Rating Areas By – law, 2015.
- (2) No new special rating area determined in terms of this By – law may implement its implementation plan prior to 1 July 2016.

