

BITOU MUNICIPALITY



Draft Special Rating Area Policy

May 2022

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1. DEFINITIONS

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

1.1.1 **"additional rate"** means a rate as contemplated in sections 19(1)(d) and 22(1)(b) of the Municipal Property Rates Act (MPRA) read together with section 11(2) of the Municipality's Special Ratings Area By-law;

1.1.2 **"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;

1.1.3 **"business plan"** means a motivation report, implementation plan and term budget as contemplated in section 5 of the By- law;

1.1.4 **"By-law"** means the Bitou Municipality: Special Rating Area By-law;

1.1.5 **"CFO"** means the Chief Financial Officer;

1.1.6 **"Companies Act"** means the Companies Act, 2008 (Act No 71 of 2008), as amended or replaced;

1.1.7 **"Council"** means the Council of the Bitou Municipality;

1.1.8 **"IDP"** means the Integrated Development Plan of the Bitou Municipality;

1.1.9 **"majority"** means the majority of property owners as contemplated in paragraphs 6.1.5 and 6.1.6 of the Policy;

1.1.10 **"management body"** means the management body of a special rating area to be established in accordance with the provisions of section 10 of the By-law;

1.1.11 **"owner"** has the meaning assigned to it in section 1 of the Property Rates Act;

1.1.12 **"non-profit company"** defined as a non-profit company with members as defined in section 1 of the Companies Act No 71 of 2008;

1.1.13 **"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;

- 1.1.14 **"Property Rates Act"** means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);
- 1.1.15 **"rateable property"** has the meaning assigned to it in section 1 of the Property Rates Act;
- 1.1.16 **"special rating area (SRA)"** means a special rating area approved by the Council in accordance with the provisions of section 22 of the Property Rates Act;
- 1.1.17 **"steering committee"** means the steering committee of a special rating area to be established in accordance with the provisions of paragraph 10.1.1 of the Policy; and
- 1.1.18 **"term budget"** means the budget of the management body contemplated in Paragraph 16.2 of the Policy.

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 Bitou Municipality.

3. AIM OF THE POLICY

- 3.1 This Policy aims to –
 - 3.1.1 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;
 - 3.1.2 Provide guidance to members of the local community and to decision makers within the Bitou Municipality in relation to the establishment of special rating areas; and

- 3.1.3 Strike an appropriate balance between facilitating self-funded community initiatives that aim to improve and/or upgrade neighbourhoods 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

- 4.1 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 purpose of a special rating area is to –
- 5.2.1 Enhance and supplement the **municipal services** provided by the Bitou 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
 - 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 Bitou Municipality recognises special rating areas as a potential tool for assisting it to fulfil 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 Bitou 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

- 6.1 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 –

- 6.1.1 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;
- 6.1.2 The special rating area will not be used to reinforce existing inequities in the development of the Bitou's area of jurisdiction;
- 6.1.3 The determination of the special rating area is consistent with the IDP;
- 6.1.4 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;
- 6.1.5 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;
- 6.1.6 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;
- 6.1.7 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;
- 6.1.8 The proposed improvement or upgrade has been clearly and fully defined;
- 6.1.9 The proposed improvement or upgrade can be clearly and logically linked to a

geographical area, the boundaries of which can be clearly determined;

- 6.1.10 There is evidence that it will be financially viable to use a special rating area to raise funds for the proposed improvement or upgrade;
- 6.1.11 Council is satisfied with the institutional arrangements proposed in respect of the special rating area; and
- 6.1.12 Ultimately, the decision whether or not to determine a special rating area rests with the Council in its sole discretion.

7. APPLICABILITY OF THE BITOU MUNICIPALITY'S RATES POLICY AND OTHER POLICIES

- 7.1 The Bitou Municipality's rates policy applies with the necessary changes to this Policy. In particular, and without limiting the generality of the afore-going, section 17 of the Property Rates Act, 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 Bitou Municipality's Customer Care, Credit Control, Debt Collection, Indigent and Tampering Policy.

8. PROCESS

- 8.1 This Policy sets out –
 - 8.1.1 The institutional arrangements for special rating areas (paragraph 9);
 - 8.1.2 The establishment principles (paragraph 10);
 - 8.1.3 The information to be included in the business plan which needs to be submitted to the Bitou Municipality in order to motivate a request for determination of a special rating area (paragraph 11);
 - 8.1.4 The annual requirements for Special Rating Areas (paragraph 12);

- 8.1.5 The amendment and/or extension of the terms of a special rating area (paragraph 13 and 14);
- 8.1.6 The dissolution requirements which must be followed (paragraph 15); and
- 8.1.7 The financial arrangements (paragraph 16).

9. INSTITUTIONAL ARRANGEMENTS

9.1 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 Bitou Municipality are the following:

9.1.1 Administration by a NPC

- (a) 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.
- (b) This structural arrangement does not entail ratepayers setting the additional rate, which under law can only be done by the Council.
- (c) Councillors who are actively involved in pursuing and promoting the establishment of a special rating area must recuse themselves when Council considers the application for the establishment of a special rating area.
- (d) 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.
- (e) The functions of the structure would include:
 - (i) Determining the funding required each year (paragraph 16.2);
 - (ii) Appointing contractors to effect the improvement/s or upgrade/s; and
 - (iii) Receiving the additional rate collected by the Bitou Municipality and expending the funds in accordance with the approved business plan.

9.1.2 Structural requirements:

- (a) Before Bitou 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.
- (b) 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;
- (c) 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;
- (d) The NPC must have at least 3 (three) directors, each with specific portfolio(s) aligned with the business plan;
- (e) The Executive Mayor will appoint councillor(s) as director(s) and alternate director(s) as representative(s) of the Municipality, who shall attend and participate in, but not vote at meetings of the management body, to the board of the management body in accordance with section 10(4) 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;
- (f) 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 daily newspaper and must also give notice in a community (local) newspaper to accommodate other official languages where applicable; and
- (g) The purpose of the meetings referred to in paragraph 9.1.2(f) will be to, amongst other items on the agenda:
 - (i) Appoint directors, other than the director(s) appointed in terms of paragraph 9.1.2(e);
 - (ii) Amend the NPC's MOI if required and with prior written consent of the CFO; and
 - (iv) Approve the following year's budget and implementation plan (paragraph 16.2).

10. ESTABLISHMENT PRINCIPLES OF A SPECIAL RATING AREA

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

10.1.1 Initiation Phase

- (a) The applicant must form a Steering Committee that is representative of property owners within the proposed special rating area.
- (b) The Steering Committee must keep a comprehensive portfolio of evidence of the establishment process.
- (c) 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.
- (d) All documents relating to the establishment process must be approved by the CFO before circulating them to the public.
- (e) After the Steering Committee confirms in writing that it will engage in the pursuit of establishing a special rating area it must supply the Bitou Municipality with a map depicting the boundaries of the special rating area.
- (f) The Bitou 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.
- (g) 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.
- (h) After the Bitou 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.
- (i) 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.

- (j) The Steering Committee must consult with the respective Bitou Municipality Directorate(s) regarding the current service(s) provided and the levels thereof as well as the SRA anticipated service(s) and level thereof.
- (k) The Steering Committee must compile a business plan in accordance with the provisions of paragraph 11 of this Policy.

10.1.2 First Public Meeting

- (a) The public meeting must be conducted in accordance with section 4 of the By-law.

10.1.3 Obtaining Support

- (a) Support may only be obtained after the public meeting and on the consent form provided by the Bitou Municipality.
- (b) 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.
- (c) 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.

10.1.4 Application

- (a) An application must be submitted in terms of paragraph 11 of this Policy.
- (b) The application must be advertised in terms of paragraph 9.1.2(f) 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.
- (c) Prior to submitting an application, the Steering Committee will be required to set up a website that displays the following:
 - (i) Application letter;

- (ii) Business plan;
 - (iii) Urban management perception report;
 - (v) Public meeting presentations and minutes;
 - (vi) By-law;
 - (vii) Policy;
 - (viii) SRA frequently asked questions;
 - (ix) Notices; and
 - (x) Blank consent / objection form.
- (d) 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.

10.1.5 Objections

- (a) Consents and objections will be considered only if they are submitted to Council by the last day specified in the application notice.
- (b) Property owners objecting to the establishment of a special rating area in terms of paragraph 10.1.5(a) must do so in writing and include a motivation for their objection.
- (c) 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.
- (d) Any property owner who wants to make oral representations for submission to Council in terms of section 6(4) of the By-law will be assisted by an official to document this for inclusion in the report to be considered by Council.

10.1.6 Inaugural Phase

- (a) The process and appointment of all service providers must be communicated to

the property owners on the NPC's website and in newsletters.

- (b) The application form to become a member of the NPC must also be available on the website.
- (c) Any special rating area that is approved more than nine months prior to the effective date may:
 - (i) 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
 - (ii) Implement the original business plan.

11. BUSINESS PLAN CONTENT

11.1 The business plan comprises of the following:

11.1.1 A motivation report;

11.1.2 An implementation plan; and

11.1.3 A term budget.

11.2 Motivation report

11.2.1 The motivation report must contain the following:

- (a) Introduction:
 - (i) An executive summary of the improvement or upgrade proposed for the special rating area as set out in the business plan;
 - (ii) An explanation of how the proposed improvement or upgrade is linked to the geographical area of the proposed special rating area;
 - (iii) An explanation of why the proposed special rating area will not reinforce existing inequities in the development of the Bitou Municipality;
 - (iv) An explanation of how the special rating area, if determined, will be consistent with the Bitou Municipality's IDP as per the Service

- Departments' business plans; and
- (v) An explanation of the institutional arrangements proposed in relation to the special rating area;
 - (b) Vision;
 - (c) Mission;
 - (d) Goals;
 - (e) A diagram clearly indicating the boundaries of the proposed special rating area;
 - (f) Proposed management structure:
 - (i) Composition of special rating area board including allocation of portfolios; and
 - (ii) Operational arrangements;
 - (g) Services and service providers to be appointed as contemplated in paragraphs 3.1.3 and 10.1.6(a).
 - (h) Financial Impact:
 - (i) Provide details regarding the calculation of the additional rate;
 - (ii) Provide details of criteria to qualify for exemption from paying the additional rate as per paragraph 10.1.1(g);
 - (i) 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;
 - (j) 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;
 - (k) Proof of the notice of the public meeting or meetings contemplated in the By-law;
 - (l) Minutes of the public meeting or meetings; and

- (m) Compilation date.

11.3 Implementation plan

11.3.1 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:

- (a) Milestones;
- (b) Tasks per milestone;
- (c) Start and finish date per task;
- (d) Assign responsibility per goal, milestone & task; and
- (e) Performance indicators per milestone.

11.4 Term budget

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

- (a) 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
- (b) A budget split for the provision of improvements or upgrades between the different categories of properties.

11.4.2 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 Bitou 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 -
- (a) The quantum of financial reserves is not less than two months of revenue received from the Bitou Municipality in terms of the approved budget per SRA except if these funds have been duly allocated to a project; and
 - (b) 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 municipality's 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 13 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:
- 13.2.1 Explanation of impact on costs, budget and implementation plan expectations;
 - 13.2.2 Cross subsidisation by existing members;
 - 13.2.3 Fairness and equity;
 - 13.2.4 Affordability and sustainability of the existing SRA;

- 13.2.5 Intention of the legislation prescribing that all property owners; must be allowed to participate in the formation of a SRA;
- 13.2.6 Priorities of the new area may differ from the existing SRA priorities; and
- 13.2.7 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; and
 - 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

- 14.1 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

- 15.1 The special rating area may be dissolved by resolution of the Council in terms of section 15 of the By-law. Thereafter the management body may be wound up in terms of the provisions of section 15 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 Bitou 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 Bitou 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 Bitou Municipality will pay over any additional rate collected to the NPC, the NPC and the Bitou 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.
- 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 Bitou Municipality and each SRA, should he/she deems it necessary.

17. COMMENCEMENT AND IMPLEMENTATION

- 17.1 This Policy will come into effect on **1 July 2022**.
- 17.2 Where the Bitou 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

18.1 Unless otherwise agreed by the Municipal Manager or his/her nominee, the Bitou 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

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