



nelson mandela bay
M U N I C I P A L I T Y
PORT ELIZABETH | UITENHAGE | DESPATCH

**NELSON MANDELA BAY
METROPOLITAN MUNICIPALITY**

(the "NMBMM")

SPECIAL RATING AREAS POLICY

Adopted on 30 day of *JANUARY* 2014

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WHEREAS the Nelson Mandela Bay Metropolitan Municipality: Property Rates Policy, adopted by the NMBMM in terms of the Nelson Mandela Bay Metropolitan Municipality: Property Rates By-Law, promulgated in terms of the Local Government: Municipal Property Rates Act 6 of 2004 provides, inter alia, that the Council of the NMBMM may:

- Adopt a Policy to regulate the implementation of Special Rating Areas as envisaged in Section 22 of the Local Government: Municipal Property Rates Act 6 of 2004; and
- By resolution from time to time determine Special Rating Areas as envisaged in Section 22 of the said Act and levy additional rates on properties in such areas for the purposes of raising funds as contemplated in the said Section.

The following Policy is hereby accordingly adopted.

1. **DEFINITIONS & INTERPRETATION**

In this Policy, unless the context indicates otherwise:

- 1.1 "Applicable Legislation" means, for the purposes of this Policy, the Local Government: Municipal Property Rates Act 6 of 2004, the Nelson Mandela Bay Metropolitan Municipality: Property Rates By-Law and the Nelson Mandela Bay Metropolitan Municipality: Property Rates Policy, the Companies Act 61 of 1973 and the Companies Act 71 of 2008 (when enacted);
- 1.2 "Applicable Property Rate" means the annual rate in Rand value payable in respect of Rateable Property falling within a SRA as determined by the Municipality prior to the determination of the SRA Rate applicable thereto;

- 1.3 "Applicant" means any Owner who makes an application for the establishment of a SRA in accordance with the provisions of this Policy, or if a Management Body is established in terms hereof, any reference to the "Applicant" means the Management Body;
- 1.4 "CFO" means the Chief Financial Officer of the NMBMM;
- 1.5 "Council" means the Council of the NMBMM;
- 1.6 "Local Community" has the meaning ascribed to it in the Rates Act;
- 1.7 "Management Body" means a management body of a SRA which shall only be a Company incorporated in terms of Section 21 of the Companies Act 61 of 1973 or a Non-Profit Company established in terms of the Companies Act 71 of 2008 (when enacted);
- 1.8 "Municipality" or "NMBMM" means the Nelson Mandela Bay Metropolitan Municipality;
- 1.9 "Owner" has the meaning ascribed to it in the Rates Act;
- 1.10 "Property" has the meaning ascribed to it in the Rates Act;
- 1.11 "Rates Act" means the Local Government: Municipal Property Rates Act 6 of 2004;
- 1.12 "Rates By-Law" means the Nelson Mandela Bay Metropolitan Municipality: Property Rates By-Law;
- 1.13 "Rates Policy" means the Nelson Mandela Bay Metropolitan Municipality: Property Rates Policy;

- 1.14 "Rateable Property" means property falling within a SRA or envisaged SRA on which the Municipality levies an Applicable Property Rate in terms of the Applicable Legislation;
- 1.15 "Services" means the improvement or upgrading of a SRA to be undertaken by a Management Body in addition to those undertaken by the Municipality in terms of its constitutional obligations;
- 1.16 "SRA" means a geographical area within the area of jurisdiction of the Municipality determined or to be determined by the Council as a Special Rating Area in terms of Section 22 of the Rates Act and this Policy;
- 1.17 "SRA Business Plan" means a business plan applicable to a SRA as proposed by an Applicant;
- 1.18 "SRA Property" means each individual Property falling within a SRA or proposed SRA, excluding any property owned by the Municipality or any Municipal Entity of which the Municipality is the parent Municipality;
- 1.19 "SRA Rate" means an additional rate to be imposed and recovered by the Municipality from Owners of SRA Property, subject to such Property being Rateable Property which shall be a percentage of the Applicable Property Rate expressed as Cents in the Rand so calculated that the aggregate thereof equals the Applicant's proposed amount in its SRA Business Plan plus VAT;
- 1.20 "VAT" means Value Added Tax as defined in Value-Added Tax Act 89 of 1991;

2. PURPOSE OF THIS POLICY

- 2.1 This Policy shall not detract from the entitlement of the Municipality to initiate the establishment of a SRA and to levy a SRA Rate on SRA Property for the

purposes of raising funds for the improvement or upgrading of the SRA in compliance with the Applicable Legislation.

2.2 Recognizing that the improvement or upgrading of areas can:

2.2.1 Prevent the degeneration of urban areas and consequential urban decay; and

2.2.2 Facilitate the upliftment, economic growth and sustainable development of areas; and

2.2.3 Encourage investment in areas.

the purpose of this Policy is to provide a framework and procedure under which Owner of Properties within the jurisdiction of the Municipality can initiate the establishment of a SRA and undertake the improvement or upgrading of the SRA funded by additional rates to be levied on the SRA Properties by the Municipality, subject to an acceptable Agreement being concluded between the Municipality and a Management Body to be established by the Owners of the SRA Properties.

2.3 The further purpose of this Policy is, without detracting from the discretion of the Accounting Officer of the Municipality, to recognize that where the Services are to be rendered by a Management Body established by the Owners of the majority of SRA Properties and where the Services will be funded by SRA Rates payable by the Owners of SRA Properties, it would be justifiable for the Accounting Officer of the Municipality to dispense with the official procurement processes established by the Supply Chain Management Policy of the Municipality in terms of Regulation 36 thereof and to prequalify any invitation to prospective parties to render the Services to the effect that only Associations incorporated in terms of Section 21 of the Companies Act 61 of 1973 or Non-Profit Companies established in terms of the Companies Act 71 of 2008 (when enacted) having members

carrying the support of the majority of Owners of the SRA Properties by number will qualify to render the envisaged Services.

3. **ESTABLISHMENT OF A SPECIAL RATING AREA**

- 3.1 Nothing herein contained detracts from the entitlement of the Municipality to initiate the establishment of a SRA in compliance with the Applicable Legislation.
- 3.2 Any Owner (Applicant) of Rateable Property within the jurisdiction of the Municipality may apply to the Council for the approval of the establishment of a SRA, the proposed area of which includes such Owner's Rateable Property.
- 3.3 The application process referred to in clause 3.2 above shall be subject to the provisions of clauses 4 to 10, inclusive of this Policy.

4. **APPLICATION**

Any Application for the establishment of a SRA shall be:

- 4.1 In writing and in such form as the Municipality may from time to time prescribe;
- 4.2 Submitted to the Municipality not more than 9 (nine) months after the date on which the public meeting referred to in clause 6 is held; and
- 4.3 Accompanied by:
 - 4.3.1 A five (5) year SRA Business Plan, each year of which shall end on the 30th of June and covering a period ending on the 30th of June of the fifth year after the date proposed for the establishment of the SRA, which Plan must include at least a description of the Services to be provided by the Management Body, a draft budget and the Annual Aggregate SRA Rates which the Applicant desires the Municipality to levy on all SRA

Properties which shall be identified on a schedule reflecting the SRA Property descriptions and Owners thereof;

4.3.2 A draft Memorandum and Articles of Association or Memorandum of Incorporation of the proposed Management Body to be established in accordance with the provisions of clause 11 hereof;

4.3.3 Proof of compliance with the provisions of clauses 5 and 6 hereof;

4.3.4 Proposed agreements (if any) the Applicant considers necessary for the Management Body referred to in Section 11 and the Municipality to enter into for the SRA Business Plan to be successfully implemented;

4.3.5 Written proof that a majority of Owners of Rateable Property within the proposed SRA have approved the proposed SRA Business Plan and have consented to the establishment of the proposed SRA; and

4.3.6 A motivation report containing:

4.3.6.1 a list of all Rateable Properties and the registered Owners thereof within the proposed SRA, contact details of all Owners and the value of each property as set out in the Municipality's General Valuation, differentiating between categories of properties as provided for in Section 8 of the Rates Act;

4.3.6.2 a diagram clearly indicating the boundaries of the proposed SRA;

4.3.6.3 an executive summary of the improvement or upgrade proposed for the SRA as set out in the SRA Business Plan;

4.3.6.4 an explanation of how the proposed improvement or upgrade is linked to the geographical area of the proposed SRA;

4.3.6.5 an explanation of why the proposed SRA will not reinforce existing inequities in the development of the Municipal area;

4.3.6.7 an explanation of how the SRA, if determined, will be consistent with the Municipality's integrated development plan;

4.3.7 The SRA Business Plan shall, inter alia, address the following:

4.3.7.1 those Services which will improve or upgrade the SRA;

4.3.7.2 how the proposed improvements or upgrades will be implemented;

4.3.7.3 by when the proposed improvements or upgrades will be achieved;

4.3.7.4 an implementation program, which clearly indicates the implementation milestones, dates and responsibilities; and

4.3.7.5 the aggregate SRA Rates that are proposed to be levied by the Municipality.

4.3.8 Payment of any administration fee as the Municipality may from time to time determine.

5. **NOTICE OF APPLICATION AND ADVERTISING OF INTENTION TO HOLD A PUBLIC MEETING**

5.1 Prior to the public meeting referred to in clause 6, the Applicant must:

5.1.1 Give notice of his or her intention to apply for the approval of the SRA, such notice to be given by:

5.1.1.1 publishing a notice in at least two (2) daily Newspapers circulating in the proposed SRA;

5.1.1.2 placing prominent information posters within the proposed SRA;

5.1.1.3 giving written notice of the application to all Owners of Rateable Property within the proposed SRA, such notice to be given by prepaid registered post or hand delivery or in any other manner approved in writing by the Council.

5.1.2 In the notice referred to in clause 5.1.1:

5.1.2.1 give notice of a public meeting to be held in accordance with the provisions of clause 6, which notice shall state the purpose of such meeting and shall contain details of the place, date and time when such meeting is to be held;

5.1.2.2 state where the documentation specified in clause 4 will be available for inspection;

5.1.2.3 state the municipal offices where, date from which and date by when written objections to the SRA Business Plan may be lodged with the Municipality.

5.2 The public meeting must be held not less than 7 (seven) days and not more than 30 (thirty) days after the date of publication of the last of the notices referred to in 5.1.1.1 above.

6. **PUBLIC MEETING**

6.1 The public meeting must be held at such place, date and time as advertised in terms of clause 5.

6.2 At the meeting, interested parties shall be:

6.2.1 Furnished with all relevant information relating to the proposed SRA including the draft SRA Business Plan; and

6.2.2 Given an opportunity to ask questions and express their views.

6.3 The public meeting must be held at a place within the boundaries of or not more than 5 (five) kilometers from the boundaries of the proposed SRA unless the Council approves another venue in writing before the public meeting is held.

6.4 The public meeting must be chaired by a suitably qualified and experienced person and minutes of such meeting shall be kept, which minutes shall be available for inspection by the Local Community.

7. **OBJECTIONS**

7.1 Any Owner of Rateable Property within the proposed SRA or members of the Local Community may submit written objections to the establishment of the SRA, which objections must be received by the Municipality not earlier than 7 (seven) days from date of lodgment with the Council of the application in terms of clause 4 and not later than 35 (thirty five) days from such lodgment.

7.2 The Municipality may allow the Applicant and any objector to make oral representations to it, which shall be recorded in writing by an official of the Municipality and signed by the party making the representations.

7.3 The application and all objections must be available for inspection at the offices of the Mandela Bay Development Agency, being a Municipal Entity of the Municipality, for the period referred to in clause 7.1 above.

8. APPROVAL

- 8.1 After the provisions of clauses 4, 5, 6 and 7 have been complied with, the Council shall endeavour to consider the application within 60 (sixty) days from the last date of the submission of objections in accordance with 7.1 and:
- 8.1.1 Approve the establishment of a SRA in accordance with the SRA Business Plan; or
 - 8.1.2 Approve the establishment of a SRA and the SRA Business Plan with such amendments or conditions as the Council considers to be in the Municipality's or the public interests; or
 - 8.1.3 Refuse the application, in which event the Council shall within 30 (thirty) days furnish the Applicant with written reasons for not approving the establishment of the SRA or the SRA Business Plan; or
 - 8.1.4 Refer the application back to the Applicant for amendment in such manner as the Council may direct.
- 8.2 If any application is refused by Council in accordance with the provisions of clause 6.1.3, the Applicant may at any time thereafter reapply to the Municipality for the establishment of the SRA provided that such re-application has been appropriately amended in light of the reasons for refusal by the Council.
- 8.3 If a SRA Business Plan is at any time before the approval thereof amended in any material respect, the Council may require that the application be re-advertised *mutatis mutandis* in accordance with the provisions of clause 5, that the public meeting envisaged in clause 6 above again be held and shall take cognizance of any objections thereto as envisaged in clause 7.

8.4 In determining whether to approve the establishment of a SRA and SRA Business Plan, the Council may consider, inter alia, the following:

- 8.4.1 That in terms of Section 22 of the Rates Act, the purpose of a SRA is to allow an additional rate to be levied on SRA Properties to raise funds for improving or upgrading the area;
- 8.4.2 That SRA's should not be used to reinforce existing inequities in the development of the Municipality's area of jurisdiction;
- 8.4.3 Whether the determination of the SRA is consistent with the Municipality's integrated development plan;
- 8.4.4 The views of the Local Community;
- 8.4.5 Whether the procedure or requirements of Section 22 of the Rates Act has been complied with;
- 8.4.6 Whether the proposed improvement or upgrade has been clearly and fully defined;
- 8.4.7 Whether the proposed improvement or upgrade can be clearly and logically linked to a geographical area, the boundaries of which can be clearly determined;
- 8.4.8 Whether there is evidence that it will be financially viable to use a SRA to raise funds for the proposed improvement or upgrade;
- 8.4.9 The history of payment and/or non-payment by Owners of Rateable Property situated within the proposed SRA of amounts due to the Municipality.

8.5 Notwithstanding the provision hereof, it shall be at the Council's sole and absolute discretion whether to approve an SRA or SRA Business Plan.

9. **ESTABLISHMENT OF A SRA AND IMPLEMENTATION OF A SRA BUSINESS PLAN**

Pursuant to the determination by the Council that a SRA may be established in terms of clause 8, the SRA Business Plan may only be implemented after:

- 9.1 The establishment of the Management Body in terms of Section 11; and
- 9.2 From a date to be determined by Council with due reference to the provisions of the Applicable Legislation governing imposition of additional rates and in particular the SRA Rate to be levied on the SRA properties; and
- 9.3 After the conclusion of an Agreement between the Municipality and the Management Body regulating the implementation of the Management Body's Business Plan and the respective parties' roles and responsibilities.

10. **AMENDMENT OF SRA BUSINESS PLANS AND EXTENSIONS OF THE TERM THEREOF**

- 10.1 An amendment of a SRA Business Plan may be approved by Council on written application by the Management Body at any time after the establishment of the SRA.
- 10.2 An amendment in terms of sub-clause 1 which Council considers not likely to materially affect the rights or interests of any person including the Local Community may be approved forthwith by the Council provided that the Council may require the Management Body to cause notice of the application for such amendment to be published in daily newspapers circulating in the SRA.

- 10.3 An amendment in terms of sub-clause 1 which the Council considers is likely to materially affect the rights of interests of any person including the Local Community and/or which affects the SRA Rate and/or which changes the boundaries of the SRA may only be approved by Council after the Management Body has complied with clauses 4,5,6 and 7 read in context given the nature of the amendment sought provided that the Council may for good reason and on written application of the Management Body exempt the Management Body from complying with any such provisions or condone any non-compliance with any such provisions and the approval of the amendment shall be subject to the provisions of clause 8 read in context with the amendments sought.
- 10.4 Not earlier than 90 (ninety) days prior to the expiry of the period of the SRA Business Plan referred to in clause 4.3.1 or the expiry of any extension of the SRA Business Plan under this clause 10.4, the Management Body shall submit to the Council an application for the extension of the term of the SRA Business Plan or any extension thereof for approval by the Council provided that the sub-clause 1, such extension shall not materially affect the rights or interests of any person or member of the Local Community or change the boundaries of the SRA. The Council may, before taking a decision to extend the term of the SRA Business Plan require the Management Body to cause notice of the application for such extension to be published in two daily newspapers circulating in the SRA which notice must comply with the provisions of clauses 5.1.1.1, 5.1.2.2 and 5.1.2.3 with the changes required by the context.
- 10.5 The provisions of sub-clauses 1 to 3 above shall apply in the same terms to any amendment of the SRA Business Plan which has been extended in terms of sub-clause 4 above.
- 10.6 In the event of any Owner of Rateable Property lodging written proof with the Municipality that Owners of Rateable Properties within the boundaries of the SRA who own more than 50% in number of such properties do not approve the

proposed amendment or extension of the SRA Business Plan, the Council shall not extend or amend the SRA Business Plan.

11. **ESTABLISHMENT AND COMPOSITION OF MANAGEMENT BODY**

11.1 The Applicant shall, before the SRA Business Plan is implemented in accordance with the provisions of clause 9, cause to be established a Management Body for the purposes of managing and controlling the implementation of the SRA Business Plan, which Management Body shall be a Company incorporated in accordance with the provisions of Section 21 of the Companies Act 61 of 1973 or a Non-Profit Company incorporated in accordance with the provisions of the Companies Act 71 of 2008 (when enacted) and whose Memorandum and Articles or Memorandum of Incorporation shall provide that only Owners of SRA properties shall qualify for membership.

11.2 The Memorandum and Articles or Memorandum of Incorporation of the Management Body shall furthermore provide that each Owner of each Ratable Property within the SRA shall have one vote.

11.3 The Municipality shall monitor compliance by the Management Body with the Applicable Legislation, this Policy, any guidelines or policies adopted by the Municipality in terms of clause 15 and any agreements entered into between the Management Body and the Municipality, by :

11.3.1 Receiving and considering the audited financial statements referred to in clause 12.3 and any other arrangement in respect of monthly reporting and annual reports; and

11.3.2 If it elects to do so, nominating a political representative to attend and participate, but not vote, at meetings of the Management Body.

12. POWERS AND DUTIES OF MANAGEMENT BODY

- 12.1 Within two (2) months after receipt of the first payment by the Municipality to the Management Body in terms of this Policy, the Management Body must commence to provide the Services in accordance with the SRA Business Plan and Agreement entered into between the Municipality and the Management Body.
- 12.2 The Management Body must comply with all Applicable Legislation, this Policy and the Guidelines and Policies published by the Council from time to time in terms of clause 15.
- 12.3 The Management Body must provide the Municipality with its audited financial statements and annual reports for the immediately preceding financial year within three (3) months of the end of each financial year.

13. FINANCES

- 13.1 The financial year end of the Management Body shall coincide with the financial year end of the Municipality, which is currently the 30th of June.
- 13.2 Where a SRA has been established, the Municipality shall levy the SRA Rate on each SRA Property in accordance with the Applicable Legislation and more particularly Section 22 of the Rates Act and this Policy.
- 13.3 The SRA Rate shall be a debt due to the Municipality and shall be payable and collected in the same manner as other rates imposed by the Municipality.
- 13.4 Any payment by the Municipality to the Management Body of a SRA shall be subject to the prior conclusion of an Agreement between the Management Body and the Municipality which Agreement shall regulate, inter alia, the mechanisms and manner of payment and the other terms upon which payment to the Management Body is to be made, VAT invoices to be submitted by the

Management Body to the Municipality, the retention of a portion of monies collected to defray bad debt and the payment of such monies retained or portions thereof by the Municipality to the Management Body once an acceptable amount of retained funds has been reached which will cover any expected or envisaged bad debt.

14. **DISSOLUTION**

14.1 The Municipality may disestablish a SRA:

14.1.1 Upon written application signed by a majority of Owners of Rateable Properties within the boundaries of the SRA; or

14.1.2 After prior consultation with the Management Body, for any other good cause, whereupon the Management Body shall be wound up.

14.2 Upon the winding up of a Management Body, the assets remaining after satisfaction of all its liabilities shall be:

14.2.1 Transferred to another association or institution having objects similar to the main object of the Management Body; or

14.2.2 Utilised by the Municipality to provide additional Services in accordance with the SRA Business Plan.

15. **GUIDELINES AND POLICIES**

The Municipality may at any time publish Guidelines or Policies in respect of the establishment of SRA's including but not limited to guidelines or policies in respect of the areas or categories of area within which SRA's may be established and guidelines or policies regarding the Services that may be provided by the Management Body.

16. **SHORT TITLE AND COMMENCEMENT**

This Policy shall be known as the Nelson Mandela Bay Metropolitan Municipality: Special Rating Areas Policy and shall commence on the date of adoption thereof by the Council.