

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)**

Case No. 3251/2018

In the matter between:

**ST FRANCIS BAY (WARD 12) CONCERNED
RESIDENTS' ASSOCIATION**

Applicant

and

KOUGA LOCAL MUNICIPALITY

First Respondent

**ST FRANCIS PROPERTY OWNERS
ASSOCIATION**

Second Respondent

ST FRANCIS PROPERTY OWNERS NPC

Third Respondent

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I the undersigned,

CHARL DU PLESSIS

do hereby make oath and state that:

1. I am a major male Municipal Manager of the First Respondent, a municipality established in accordance with the Local Government: Municipal Systems Act, 32 of 2000, and with its principal place of business situated at 33 Da Gama Road, Jeffrey's Bay.
2. I am duly authorised to depose to this affidavit on behalf of the First Respondent.
3. The facts herein are to the best of my knowledge true and correct and fall within my direct knowledge, unless it appears from the context or is stated to the contrary. In the interests of placing a continuous and coherent version of events, I attest to facts which are within the direct knowledge of Desmond Wayne Furphy and I refer to his confirmatory affidavit filed evenly herewith.
4. Prior to dealing with the content of the Applicant's founding affidavit and dealing *a seriatim* with its contentions, it is necessary to detail the background to this application, as the Applicant's founding affidavit is replete with factual inaccuracies and errors. To this extent that same are at variance, specific details will be provided to illustrate these inaccuracies and errors which are contained in the Applicant's founding affidavit.

A. BACKGROUND AND INTRODUCTION

5. The Greater St Francis Bay area has suffered a number of on-going concerns with its infrastructure in particular its disintegrating road services, storm water drains, sewerage system, silting up of its river system and estuary. Of grave concern is the erosion of the beach area and the disintegration of its spit. The spit has lost approximately 90% of its dune width which poses a severe risk to the canal system and properties lining the canals. If the spit gives way, there will be nothing to protect the canal system from the open sea.
6. Notwithstanding the gravity of these issues, the First Respondent does not have the available resources in its budgetary spend to take immediate action to restore the infrastructure. Environmentally this poses a significant risk to homeowners in the area.
7. During 2015 the First Respondent was approached by an association formerly known as the St Francis Bay Residents Association (the “*SFBRA*”) (the predecessor to the Second Respondent) in regard to these on-going issues. The decision taken at the SFBRA’s annual general meeting in December 2015 (by the vast majority in attendance – 176 out of 180) was that a donation drive would be initiated to help finance the restoration of the infrastructure. SFBRA raised

approximately R4.5 million during 2016 and in March 2016 the Third Respondent was registered as a non-profit company to hold the donations procured pursuant to the donation drive. The funds collected were woefully inadequate to fund the restoration, once the costing aspect had been investigated. The SFBRA discussed other viable options with the First Respondent and in particular the establishment of a Special Rating Area (“SRA”), as it became apparent that only a finance-raising operation of this scale would be able to fund the infrastructure restoration envisaged by the SFBRA.

8. A municipality may establish a SRA (also known as a Special Service District) in which differentiated service is provided, the basic idea being that additional services may be provided if consumers of those services agree to additional service charges. This has manifested in a number of so called “*city improvement districts*” in *inter alia* Port Elizabeth, Cape Town, Durban and Johannesburg. The services rendered in terms of a SRA are an adjunct to those being provided for by the municipality and are designed to supplement and enhance those which the municipality are able to deliver.
9. The first SRA proposal was presented to the SFBRA at its annual general meeting in December 2016. This proposal envisaged an additional levy to be imposed of 50% of the monthly rates over a 10 year period. The area of operation being the canals, village, Santareme, St Francis on Sea, the Port, Otters Landing and the

industrial sites. The proposal was generally well received at the annual general meeting. I was present at the meeting, in my capacity as municipal manager, and delivered a speech in support of the proposal.

10. A vote for this SRA proposal commenced during January 2017, however, was halted at the end of April 2017. This was on account of the First Respondent not being in a position to handle a SRA application. On closer consideration of the First Respondent's legislative framework it became apparent that the existing legislation lacked a policy to govern the establishment, regulation and management of a SRA. The First Respondent engaged its attorneys of record and together formulated a prescribed mechanism, to be incorporated in the legislation, to cure this practical defect. In the result, and after discussion with the First Respondent, the SFBRA placed its SRA proposal on hold.
11. During the voting process the SFBRA also experienced difficulties in procuring votes from Santareme, St Francis-on-Sea, the Port and Otters Landing areas on account of there being so many vacant undeveloped plots. The First Respondent did not have the correct billing information for these areas and in the result many owners could not be contacted to vote and/or were not aware of the vote. I pause to mention that as the SRA levy is a percentage payable in respect of an owner's municipal rates, therefore, the SRA levy payable in connection with a vacant plot would in any event be minimal.

1 November 2017

12. SFBRA was originally focused primarily on the local residents. A decision was taken in 2016 to change its name to the St Francis Property Owners Association (the Second Respondent). The Second Respondent now focussed on all property owners in the St Francis Bay area, whether resident or not. Approximately 80% or more of property owners are not resident in St Francis Bay, and their property investments are holiday homes and undeveloped plots.
13. The Second Respondent's current Constitution, which was adopted on 1 November 2017, is annexure **AC3** to the founding affidavit.

13 November 2017

14. Following consideration by the First Respondent of its existing legislation, a proposed amended Property Rates Policy (including a Part A: Special Rating Policy) (hereinafter referred to as "*the Policy*") and Kouga Municipality's Rates By-Law (hereinafter referred to as "*the By-Law*") was introduced to the First Respondent's council at its meeting on 13 November 2017. A copy of the Minutes of the First Respondent's special council meeting is attached marked **"CDP1"** hereto.

15. It was resolved that the proposed By-Law and Policy would be published to allow the public an opportunity to make representations with regard to the proposed By-Law and Policy.

15 and 16 November 2017

16. Pursuant to this resolution by the First Respondent's council, public participation notice (no. 190/2017), a copy of which is marked "**CDP2**", was published. The notice advised that:

- 16.1. A public participation meeting would be held on 28 November 2017 at 19:00 at the Newton Hall;

- 16.2. The proposed By-Law and Policy could be accessed on the First Respondent's website and hardcopies were available at the Jeffrey's Bay, Humansdorp and St Francis Bay libraries;

- 16.3. Any comments on the proposed special ratings By-Laws and Policy was to be submitted by 18 December 2017 to the municipal manager at the Kouga Municipal office (33 Da Gama Street, Jeffrey's Bay) or by email to a specified email address; and

- 16.4. More information of the proposed By-Law and Policy could be obtained from the CFO, Selwyn Thys.
17. This public participation notice was published in the Eastern Cape Herald on 15 November 2017 (annexure **“CDP3”** hereto).

28 November 2017

18. On 28 November 2017 a public participation meeting was held at the Newton Hall in Jeffrey’s Bay. Members of the community attending the meeting were presented with the proposed revised Policy and By-Law and had an opportunity to discuss same and ask questions.

30 November 2017

19. A further notice inviting public comment to the proposed By-Law and Policy was published on 30 November 2017. A copy of this notice appears as annexure **AC10** to the founding affidavit. Reference at paragraph 17.17 of the founding affidavit to the notice being published on 17 December 2017 (one day before the closing date for submissions) is incorrect, as the date of the notice is visible and is 30

November 2017. In any event the notice had already been published as detailed hereinbefore.

6 December 2017 and 11 December 2017

20. On 6 December 2017 a notice advertising a public meeting to be held on 20 December 2017 was placed in the Eastern Cape Herald and Die Burger. Copies of these notices are attached marked **“CDP4”** and **“CDP5”** respectively.

21. Notice was also placed in the December issue of the St Francis Chronicle, a monthly community newspaper which circulates in the area. A copy of an extract from the publication dated 11 December 2017 is attached marked **“CDP6”**.

19 December 2017

22. On 19 December 2017 a special council meeting of the First Respondent was held. A copy of the minutes is attached marked **“CDP7”**. In terms of the minutes:

- 22.1. objections to the proposed By-Law and Policy were received, noted and evaluated;

- 22.2. it was resolved that the By-Law and Policy be adopted; and

22.3. the adopted By-Law would be published in the Provincial Gazette.

20 December 2017

23. On 20 December 2017 a public participation meeting was held in St Francis Bay. This meeting was jointly convened by the First and Second Respondent. 91 members of the public were in attendance.

24. The purpose of the meeting was to discuss the new SRA proposal, which was available on the Second Respondent's website prior to the meeting. Copies of the minutes are attached and marked **AC13** to the founding affidavit. I personally attended the meeting, on behalf of the First Respondent, and communicated the First Respondent's support of the revised SRA proposal.

25. At this meeting it was proposed that:

25.1. The SRA levy be reduced from the original proposed 50% of property owners' monthly rates to 25% (the shortfall to be procured from alternative sources).

- 25.2. The demarcated area for imposition of the levy to include only the Village and Canal areas.
- 25.3. The restoration of the beach, spit and river would be priority one. The repair and maintenance of arterial roads and parking would be priority two and the installation of CCTV cameras would be priority three.
26. The members of the public in attendance were in full support of the proposal. Members were advised that the re-vote would take place in early January 2018, once the First Respondent had gazetted the amended By-Law. Reference to a re-vote in the minute is technically incorrect, as this was the first time that members of the public were called upon to vote in respect of the revised SRA proposal. A vote had taken place in respect of the prior SRA proposal in 2017. However, that SRA proposal had been abandoned.
27. The reason for the reduction in the demarcated area was based on *inter alia* the practical difficulties which the Second Respondent would encounter in managing the voting process and procuring the votes for the Greater St Francis Bay area which would prove a monumental task given that there are approximately 5000 properties situated in the area. Consideration was also given to the difficulties encountered by the Second Respondent in procuring votes in respect of the earlier vote in the Santareme, St Francis-on-Sea, Port and Otters Landing areas (as

discussed above), and that the SRA component in respect of vacant plots would in any event be minimal. The Second Respondent (represented by Desmond Wayne Furphy) discussed these practicalities with me (on behalf of the First Respondent), and a decision was taken by the Second Respondent to reduce the demarcated area into a more manageable portion. There was no ulterior or sinister motive. The decision was taken based purely on the practicalities, which are discussed above.

23 December 2017

28. On 23 December 2017 an advertisement of a public meeting to be convened on 3 January 2018 was advertised in the Weekend Post. A copy of the advertisement is attached hereto marked **“CDP8”**.

27 December 2017

29. On 27 December 2017 an advertisement of the public meeting was placed in Die Burger. A copy of this advertisement is **“CDP9”** hereto.

29 December 2017

30. On 29 December 2017 the First Respondent's By-Law was published in the Provincial Gazette Extraordinary No. 3978. A copy of the notice is AC11 to the founding affidavit.
31. The Applicant's timeline is again erroneous. Reference in paragraph 17.22 of the founding affidavit to the First Respondent having sent the By-Law for publication "*long before the date upon which public comment closed*" is gratuitous and incorrect:
- 31.1. The date for receipt of comments closed on 18 December 2017;
- 31.2. The First Respondent's council meeting was held on 19 December 2017;
- 31.3. The adopted By-Law was sent for publication on 27 December 2017;
- 31.4. The adopted By-Law was published in the Government Gazette on 29 December 2017 (11 days after closing of period within which to comment).
32. On 29 December 2017 the Second Respondent circulated a notice of public meeting via email to St Francis Property Owners. This is an email list procured from the First Respondent comprising of available email addresses for all ratespayers in the area, not limited to the demarcated area. A copy of the email is

annexure **AC14** to the founding affidavit. Recipients of the email were once again informed that all relevant documentation was available at the Second Respondent's office and on its website, the details of which were provided.

3 January 2018 and 4 January 2018

33. On 3 January 2018 a public meeting was held at the St Francis Bay Links. A copy of the minutes (which are erroneously dated "2017") are attached to the founding affidavit as annexure **AC15**. The meeting was convened jointly between the First and Second Respondent. 92 members of the public were in attendance. I was regrettably unable to attend this meeting and tendered my apology. Ward Councillor Ben Rheeder attended the meeting. At this meeting:

33.1. The Second Respondent presented its new SRA proposal in line with the First Respondent's revised By-Law and Policy;

33.2. Members were informed that the full presentation was available on the Second Respondent's website;

33.3. The floor indicated its full support of the proposal; and

- 33.4. The revision of the SRA proposal would require a re-vote (I reiterate what has been stated above about the term re-vote being technically incorrect).
34. The publication of the amendment to the By-Law had already taken place on 29 December 2018.
35. On 3 January 2018 the Second Respondent placed an advertisement of the meeting to be held on 11 January 2018 in the Eastern Cape Herald. A copy of this advertisement is annexure **“CDP10”** hereto.
36. On 4 January 2018 a similar advertisement was placed in Die Burger. A copy of this advertisement is **“CDP11”** hereto.
37. The advertising of public meetings now had to comply with the newly adopted Policy and in particular Clause 5 thereof which governs the advertising of a proposed public meeting. Clause 5.1.2 provides that such notice:
- 37.1. Shall state the purpose of such meeting and shall contain the details of the place, date and time when such meeting will be held (clause 5.1.2.1);
- 37.2. State where the documentation specified in clauses 4.3.1, 4.3.2, 4.3.6 and 4.3.7 will be available for inspection (clause 5.1.2.2); and

- 37.3. 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 (clause 5.1.2.3).
38. On 3 January 2018 the voting process commenced. The voting process concluded on 24 February 2018.
39. Prior to voting, owners of properties within the demarcated area were called upon to vote in respect of the revised SRA proposal:
- 39.1. at the two public meetings referred to hereinbefore (on 20 December 2017 and 3 January 2018); and
- 39.2. in terms of the Second Respondent's email of 29 December 2017 (annexure **AC14**).
40. In addition to the aforesaid the Second Respondent adopted the following further methods of advertising the vote and encouraging participation by those within the demarcated area:

- 40.1. a Facebook campaign was launched;
 - 40.2. emails were sent to property owners as well as the Second Respondent's monthly newsletter;
 - 40.3. volunteers made phone calls to property owners;
 - 40.4. advertisements were placed in print and internet media (such as the Info Ads, St Francis Chronicle and the St Francis Today);
 - 40.5. committee members convened a number of face-to-face meetings with property owners (either individually or in small groups) to discuss the SRA; and
 - 40.6. posters were placed in various business premises in St Francis Bay.
41. The available voting methods were as follows:
- 41.1. *By sms*: to facilitate this method Second Respondent sent all property owners for whom it had a cell phone number an SMS inviting that member to vote. The member could then reply by entering his/her identity number

and their vote (either yes or no). If members had not received such an SMS by 12 January 2018, a prescribed process could be followed.

41.2. *Online:* members could go on to the St Francis Property Owners website (<http://stfrancispropertyowners.o.za>) and following the voting instructions; and

41.3. *By manually voting:* voting forms were available at the St Francis Property Owner's website (details of which appearing above) and at its office situated at 115 St Francis Drive. Completed voting forms could be dropped off at the aforesaid office and/or could be scanned in and/or photographed and sent via Whatsapp or SMS to 082 777 5624 or contact@sfbresidents.org.

42. In terms of clause 4.3.5 of Part A of the Policy the majority of owners of rateable property within the proposed SRA area had to approve the proposed SRA business plan. An "owner" in terms of the Policy is ascribed the meaning as stipulated in section 1 of the Local Government: Municipal Property Rates Act, 6 of 2004 (the "Act").

43. For practical purposes of identifying eligible voters, the First Respondent utilised a map of the demarcated area denoting all erven situated therein. The First Respondent conducted a deeds search in respect of each individual erf to obtain the

owner's details. If the erf had been converted into a sectional title scheme, then the First Respondent's attorney was provided with this information, who in turn conducted its own search to establish from the sectional title register how many sectional title units were registered in each scheme. Each sectional title unit was given a vote, as was each erf. In doing the First Respondent established the identity of each and every owner eligible to vote. This information was sent to the Second Respondent. In confirmation of the First Respondent's attorney's involvement, I refer to the confirmatory affidavit of Edward John Murray simultaneously filed herewith.

5 January 2018

44. The Second Respondent emailed notification of the third public meeting to St Francis Property Owners, which was scheduled for 11 January 2018. A copy of the email is attached to the founding affidavit marked **AC16**. Members of the public were informed of:

44.1. The revised SRA proposal;

44.2. The methods in which owners could vote (which are detailed above);

44.3. The date, time and place of the next public meeting (being scheduled for 11 January 2018); and

44.4. The website from which members could access any additional documentation.

11 January 2018

45. A third public meeting was held at the St Francis Links on 11 January 2018 (once again reference to “2017” is an error). The advertising of this meeting complied with clause 5.2 of Part A of the Policy. The minutes of this meeting is annexure **AC17** to the founding affidavit. The meeting was held jointly between the First and Second Respondent. I personally attended the meeting on behalf of the First Respondent. 44 members of the public were in attendance. At the meeting:

45.1. The new SRA proposal was discussed (in my presence and in my capacity as municipal manager of the First Respondent).

45.2. Members of the public were informed that the revision necessitated a re-vote by property owners in the demarcated area only and that a majority vote of 50% plus 1 consenting to the SRA levy would be required (the aspect of the re-vote in the context has been discussed above).

- 45.3. The municipal manager (on behalf of the First Respondent) gave his full support to the revised SRA proposal and indicated that the First Respondent *“will have to commit to a contribution in some form equal to R3 million. He [du Plessis] was very clear that the KM [First Respondent] cannot fund this on its own.” (own emphasis)*
46. Regrettably the minute does not correctly record my comment at the meeting. Firstly the value of R3 million was assigned by the Second Respondent (not the First Respondent). In all probability the contribution is greater than R3 million per annum. Secondly, the use of the word *“commitment”* is incorrect. What I conveyed (which is not recorded properly in the minute) is that the First Respondent would continue to spend in the normal course of events in the demarcated area. This was to avoid any misconception by the public that the First Respondent would no longer financially contribute towards the area, after the establishment of the SRA. The First Respondent would continue to finance its existing services in the area. In addition, and as part and parcel of its normal expenditure, the First Respondent would make allocations in its annual budget spend on capital and maintenance projects and services, ancillary to the services/restoration funded by the SRA revenue. For example, the CCTV cameras would run off the First Respondent’s power and at its expense; the First Respondent would provide materials, labour and machinery to the roads and beach projects envisaged in the SRA business plan. The

funds allocation was recognised as an in-kind contribution. It was not necessarily a contribution sounding in money. This was not a commitment by the First Respondent to donate funds to the SRA levy, as this was ultimately the infrastructure which the imposition of the SRA levy sought to restore.

47. The clarification of this issue by the First Respondent's council at its meeting of 23 May 2018 (which is detailed hereunder in its chronological sequence) had no financial implication for those subject to the SRA levy.

15 February 2018

48. A further email was sent to the St Francis Property Owners by the Second Respondent on 15 February 2018 (annexure **AC19** to the founding affidavit). Members of the public were again informed that:

48.1. The revised SRA proposal and all relevant documentation were available on the Second Respondent's website;

48.2. Voting had been underway since early January 2018;

48.3. Members could vote online or on the Second Respondent's website; and

48.4. Members could also print a copy of the voting form off the website and scan it in/photograph it and send it back to the Second Respondent via Whatsapp or SMS or email.

24 February 2018

49. On 24 February 2018 the voting process closed.

50. At the time of the vote there were 1590 rateable properties within the demarcated area comprising of 1492 Erven and 98 Sectional Title units. Each sectional title unit was afforded one vote as well as each erf. A majority of 796 votes were required to vote in favour of the SRA, which equates to 50% of the total owners (within the demarcated area) plus 1.

51. A total number of 807 valid yes votes were received comprising of:

51.1. 337 valid yes votes received via email;

51.2. 375 valid yes votes received via forms; and

51.3. 95 valid yes votes received via SMS.

52. The tallying up and verification of the votes were undertaken by the First Respondent's attorneys of record on its instruction. A number of votes were disqualified on account of there being insufficient information to verify the legitimacy of the vote. By way of example:

52.1. Erf 382 Sea Vista: property owned by Tim Christy. Vote received by Venece Christy. Vote disqualified as registered owner did not vote.

52.2. Erf 2082 Sea Vista: property owned by Brykev Properties CC. Vote received by Howard Knott. Vote disqualified as unable to determine whether voter was authorised to vote on behalf of the registered owner.

52.3. Erf 3402 Sea Vista: property owned by PAT and KJ Thompson. Voter was Hermant and Linda Shaw. Vote disqualified as registered owner did not vote.

53. It is also important to mention that none of the votes which were disqualified were votes opposing the SRA.

23 February 2018

54. On or about 23 February 2018 the Second Respondent lodged its application for the establishment of a SRA. In terms of the clause 4 of Part A of the Policy, the application:

54.1. Must be in writing and in the prescribed form (clause 4.1).

- A copy of the Second Respondent's SRA Motivation and Business Plan is attached marked AC18 to the founding affidavit.
- At the time that the Second Applicant lodged its application, there was no prescribed form.
- The application comprising of the SRA motivation and business plan however encapsulated all the required information.

54.2. Submitted within 9 months after the date on which the public meeting (referred to in clause 6) was held (clause 4.2).

- The 3 public meetings were held on 20 December 2017, 3 January 2018 and 11 January 2018. The application was filed on 23 February 2018 and within the 9 month period.

54.3. Must be accompanied by:

54.3.1. A business plan of at least 5 years in duration which shall address those services which will be implemented to improve or upgrade the SRA; how the improvements or upgrades will be implemented, by when it will be achieved; the implementation programme mentioning milestones, dates and responsibilities and the aggregate SRA rates proposed to be levied by the First Respondent which shall be identified on a schedule reflecting property descriptions and owners (clause 4.3.1 and 4.3.7 of the Policy). A copy of the business plan is **AC18** to the founding affidavit and complies with the aforesaid provisions of the policy as follows:

- The business plan contained a description of the services to be provided by the management body (para 6 and 13.1 of AC18).
- A draft budget (para 13.2 of AC18).
- The annual aggregate of SRA rates which Second Respondent required the First Respondent to levy on all properties within the demarcated area (para 8 and 13.5 of AC18).
- Schedule of properties and owners (para 9 of AC18).

- The business plan for 10 years in duration, with its financial year end coinciding with that of the First Respondent, being 30 June each year (para 13 of AC18).

54.3.2. A draft memorandum of incorporation of the proposed management body (being a non-profit company) (clause 4.3.2 of the Policy).

- The Third Respondent had already been established in 2016, albeit that it underwent a number change later that year. A copy of the Windeed search evidencing its registration is attached marked AC4 to the founding affidavit.
- Paragraph 6 of AC18 deals with this aspect.
- A copy of the Third Respondent's memorandum of incorporation, which accompanied its application, is attached hereto marked "CDP12".

54.3.3. Proof of compliance with clauses 5 and 6 of the policy (clause 4.3.3 of the Policy).

- Notice of application and advertisement of the public meeting is detailed in paragraph 11 of AC18.
- Proof of the public meetings is dealt with in paragraphs 10 and 12 of AC18.
- The minutes of these meetings have been discussed hereinabove.

54.3.4. The proposed agreements (if any) that the First Respondent considered necessary in terms of clause 11 of the Policy (referred to erroneously as “*section 11*”) (clause 4.3.4 of the Policy).

- The Third Respondent’s draft finance agreement with the First Respondent was attached to the application. A copy of this agreement is AC28 to the founding affidavit.
- The draft finance agreement is also referred to in paragraph 14.1 of AC18.

54.3.5. Proof of the majority of owners having approved the SRA business plan and consented to the establishment of the SRA (clause 4.3.5 of the Policy).

- The proof of consent by the majority of owners within the demarcated area is dealt with in paragraph 10.1 of AC18.
- An electronic file was submitted to the First Respondent evidencing proof of consent.
- Hardcopy files containing consent forms were also hand delivered to the First Respondent on 23 February 2018. A copy of a letter acknowledging receipt of these hardcopy files on the said date is attached marked **“CDP13”** hereto.
- The verification process was undertaken by the First Respondent’s attorneys (acting on its instruction). The First Respondent was thus privy to the votes cast.

54.3.6. A motivation report containing:

54.3.6.1. List of all rateable properties and the owners’ details and property values (clause 4.3.6.1 of the Policy).

- A schedule of properties, owners and the property values is attached to the application and identified in paragraph 9 of AC18.

54.3.6.2. Diagram indicating boundaries of the SRA (clause 4.3.6.2 of the Policy).

- A diagram indicating the boundaries of the demarcated area is contained at paragraph 5 of AC18.

54.3.6.3. Executive summary of the proposed improvement and upgrade and explanation of how the proposed improvement or upgrade is linked to the geographical area (clause 4.3.6.3 and 4.3.6.4 of the Policy).

- This aspect is discussed in *inter alia* paragraphs 13.3 and 13.4 of AC18.

54.3.6.4. An explanation of why the SRA is not reinforcing existing inequities (clause 4.3.6.5 of the Policy).

- The First paragraph on the third page of AC18 mentions that the SRA establishment will result in job creation and this will assist in the upliftment

of the poor in the area (Sea Vista comprises of formal residences and an informal settlement).

- In any event the demarcated area comprises of luxury homes. This is a highly privileged area. There are no existing inequities to reinforce.
- I pause to mention that if the beach and spit were to wash away, investment in the Greater St Francis area would cease, alternatively, severely decline. This would have a crippling effect on the residents of Sea Vista who are reliant on these residents/homeowners/investors for their income.

54.3.6.5. Explanation of how the SRA will be consistent with the First Respondent's Integrated Development Plan (clause 4.3.6.7 of the Policy).

- The last paragraph on second page of AC18 confirms that the Integrated Development Plan was consulted.
- The collective priorities of the demarcated area are similar although not identical to those of Ward 12. Priorities do change and of course the

demarcated area is much smaller and does not cover the same expansive area as Ward 12, therefore, it would not necessarily have the same priorities listed in the same order. For example, Ward 12 includes Paradise Beach and Cape St Francis, and as such a priority in this ward would include bush clearance. This is a non-issue in the demarcated area. Accordingly, there are divergent needs and in the result different focus points.

54.3.7. Payment of the prescribed administrative fee (clause 4.3.8 of the Policy).

- At the time the application was lodged there was no prescribed administrative fee that had been imposed.
- This was the first SRA application received. The process still had to be fine-tuned, and the application had also been received in the middle of the First Respondent's financial year, and before any tariff charges.

6 March 2018 to 30 March 2018

55. Pursuant to receipt of the Second Respondent's application a public participation notice (Notice No. 35/2018) was published in the Kouga Express, St Francis Chronicle and the Eastern Cape Herald. In the said notice, a copy of which is AC20 to the founding affidavit, members of the public were informed that:

55.1. An application for a SRA had been lodged with the First Respondent;

55.2. Owners of rateable property situated within the proposed SRA or members of the local community were called upon to submit written objections to the proposed establishment of the SRA, which objections were to be received by no later than 30 March 2018 at 15h00;

55.3. Objections could also be emailed to the office of the Municipal Manager (and details were provided); and

55.4. The application would lie for inspection at the St Francis Bay Municipal Offices and at the Municipal offices situated at 33 Da Gama Road, Jeffrey's Bay, and copies would be made available upon request and at that person's own cost.

56. Copies of extracts from the aforesaid publications are attached as follows:

- 56.1. St Francis Chronicle dated 14 March 2018 is attached marked **“CDP14”** hereto;
- 56.2. The Kouga Express dated 8 March 2018 is attached marked **“CDP15”**; and
- 56.3. The Eastern Cape Herald dated 8 March 2018 is attached marked **“CDP16”**.
57. The public notice was also placed on the First Respondent’s website on 6 March 2018. A copy of an extract from the First Respondent’s website evidencing publication of the said notice is attached marked **“CDP17”** hereto.
58. In regard to Part A of the Policy:
- 58.1. Clause 7.1: members were afforded the opportunity to object to the application until 30 March 2018.
- 58.2. Clause 7.3: the application was available for inspection at the offices of the First Respondent.
59. A list of all objections received during the public participation process is attached marked **“CDP18”** hereto. This list also incorporates an objection received outside

of the prescribed window period. A total of 39 objections were received, although a number of owners objected more than once.

April 2018

60. During April 2018 the verification of the votes received took place by the First Respondent's attorneys acting on their instructions.

23 May 2018

61. In terms of clause 8.1 of Part A of the Policy the First Respondent's council shall endeavour to consider the application (after compliance with clauses 4, 5, 6 and 7) within 60 (sixty) days from date of the last date for submission of objections (the last day being 30 March 2018).
62. On 23 May 2018, and within the 60 day period, the First Respondent's council considered the application. A copy of the minutes of this meeting appear as annexure **AC27** to the founding affidavit. A copy of the agenda including annexures thereto is attached and marked "**CDP19**". To avoid unnecessary duplication the annexures forming part of the agenda which have been referred to above, such as the memorandum of incorporation and list of objections have been

excluded. The actual objection letters have also been excluded as they have been summarised in the aforesaid list. In terms of the minutes (AC27):

62.1. The application for SRA was considered;

62.2. The First Respondent's representing attorneys addressed the council and informed them on *inter alia* the voting process, the property rateable in the demarcated area, the method in which special levies will be collected and paid over to the Third Respondent (the managing body), the administration fee charged by the First Respondent, that the First Respondent will not contribute towards the SRA levy fund, that in terms of the memorandum of incorporation only owners of rateable property will qualify for membership to the Third Respondent and that the finance agreement is to be concluded for a minimum period of 5 years.

62.3. The majority of councillors present at the meeting voted in favour of the imposition of the SRA.

62.4. It was resolved that a SRA be established for the geographical area depicted on the attached plan. The following amendments were made:

62.4.1. Reference to EMF (Environmental Management Fund) be removed from the business plan;

62.4.2. The contribution of R3 million reflected under the budget in the business plan be removed (this contribution has been explained herein before);

62.4.3. The Second Respondent to make provision for bad debt on the budget in terms of the business plan (money was thus ear marked for a specific purpose and to be used in accordance with the approved business plan);

62.4.4. Note 9 of the budget be amended to refer to "*administration fee*" and not "*bad debt*" as currently reflected;

62.4.5. That paragraph 1.1 of schedule B to the Memorandum of Incorporation of the Management body be amended by deleting the words "*shall be open to*" and replacing it with the following words "*shall be limited to*".

63. Further resolutions taken were as follows:

- 63.1. That a SRA rate be levied on each rateable property situated within the boundaries of the SRA area (for a specific and limited purpose);
 - 63.2. That only the SRA levy will be collected and paid over to the special ratings area management body (the Third Respondent), and any rates collected by the First Respondent will first be applied towards the municipal property rates portion;
 - 63.3. That the finance agreement with the management body be approved and noted that the Municipal Manager shall approve a deviation in respect of the conclusion thereof (essentially the deviation being in respect of supply chain management); and
 - 63.4. That the administration fee to be retained by the First Respondent be negotiated between the Second Applicant and the Municipal Manager and the fee must be included in the finance agreement.
64. In approving the application the First Respondent complied with 8.4 of Part A of the Policy by considering the factors listed therein and in terms of clause 8.1.2 of Part A of the Policy established the SRA subject to a number of amendments detailed above.

65. In further compliance with the Part A of the Policy, the SRA business plan was only implemented after:

65.1. Clause 9.1: the management body (the Third Respondent) was established in terms of clause 11 of Part A of the Policy. As previously indicated the Third Respondent was registered on 3 March 2016. The amendment sought by the council was effected to the Memorandum of Incorporation and this amendment was communicated to the First Respondent on 02 May 2018. A copy of the letter enclosing the amended page is attached marked **“CDP20”** hereto;

65.2. Clause 9.2: the date determined by the First Respondent’s council, which was 1 July 2018 in terms of the approved business plan and paragraph 2.1 of finance agreement (details of which are contained below);

65.3. Clause 9.3: after the conclusion of an agreement between First Respondent and the Management Body (Third Respondent) regulating the implementation of the business plan and the respective parties’ roles and responsibilities. This took place on 23 May 2018 when the First Respondent approved the conclusion of the draft finance agreement with the management body of the SRA and the deviation. This is recorded in paragraph 6.4 of **AC27**. A copy of the finance agreement is attached to the

founding affidavit marked AC28. A signed copy of the finance agreement is attached hereto marked “CDP21”.

01 July 2018 onwards

66. The SRA levy was imposed with effect from 01 July 2018, which is the commencement of the 2018 financial year for the First Respondent (clause 6.1 of signed finance agreement). In terms of the signed finance agreement the following clauses bear mentioning:

66.1. Clause 6.1: The additional rate imposed and collected by the First Respondent from the owners of the properties situated within the SRA, shall, subject to such properties being rateable properties, be a percentage of the annual rate in the Rand value payable in respect of such property as determined in accordance with the Property Rates Policy expressed as cents in the Rand so calculated that the aggregate equals the Third Respondent's annual budget amounts reflected in clause 1.1.5.

66.2. Clause 6.2: the additional rate due shall be a debt due to the First Respondent and be collected in the same manner as other property rates imposed by the First Respondent. Under no circumstances shall the Third

Respondent endeavour to recover any additional rate payable by any person liable therefore.

- 66.3. Clause 6.3: within 15 (fifteen) days of the end of the month, the First Respondent shall inform the Third Respondent of the amount actually received in respect of the additional rate and shall pay the Third Respondent the additional rates actually collected less 3% which shall be retained by the First Respondent as an administration fee. (*own emphasis*)
67. The First Respondent's first batch of invoices issued after the implementation of the SRA levy erroneously did not identify the additional levy imposed expressly. A copy of a tax invoice issued on 30 July 2018 (for an owner subject to the SRA levy) is attached hereto marked **"CDP22"**. This was duly remedied one month later, and to illustrate the above a copy of a tax invoice dated 27 August 2018 indicating the special levy is attached marked **"CDP23"** hereto.
68. During July 2018 the levy assistance programme was introduced by the Third Respondent to accommodate those home owners (subject to the SRA levy) who could not afford the levy. In order to avail oneself of the assistance programme, an owner would have to qualify in terms of the means test. The criteria for the means test and supporting documentation required are detailed in annexure **AC31**. Similar approaches to financial assistance have been adopted by other SRA areas in the

country. To date there have been two applications for relief, one of which has been granted.

69. I will now *a seriatim* respond to the founding affidavit.

70. **AD PARAGRAPH 1**

70.1. The First Respondent is unable to admit the content of this paragraph and accordingly denies same, as the Applicant has attached an unsigned/unexecuted copy of its constitution as annexure **AC1**.

70.2. The First Respondent's attorneys of record have called for copies of the duly signed and executed constitution in terms of Rule 35(12). If necessary a supplementary affidavit will be filed after receipt of a proper response in terms of the aforesaid request.

71. **AD PARAGRAPH 2**

71.1. I reiterate what has been stated above regarding the Applicant's constitution. The First Respondent is unable to verify whether the Applicant's membership comprises of 142 members, as the schedule of members

forming part of the constitution is blank. The First Respondent disputes the number of members.

71.2. Copies of these documents have been called for in terms of Rule 35(12) and will be considered upon receipt thereof. If necessary a supplementary affidavit will be filed after receipt of a proper response in terms of the aforesaid request.

71.3. Accordingly, the content of this paragraph is denied.

72. **AD PARAGRAPH 3**

72.1. The Applicant has attached an unsigned resolution as annexure **AC2**. Accordingly, the First Respondent is unable to admit that the deponent is duly authorised to bring this application.

72.2. A duly completed copy of the resolution has been requested in terms of Rule 35(12). I reiterate what has been stated above regarding filing a supplementary affidavit.

73. **AD PARAGRAPH 4 – 5**

73.1. The content herein contained is admitted, save to state that the Local Government: Municipal Systems Act is 32 of 2000 (and not 1998).

74. **AD PARAGRAPH 6**

74.1. The content herein contained is admitted, save to state that there is no “*Bay*” in the Second Respondent’s name. As at the date hereof the Second Applicant comprises of 543 members and this figure appears on the Second Respondent’s website.

75. **AD PARAGRAPH 7**

75.1. The content herein contained is admitted, save to state that there is no “*Bay*” in the Third Respondent’s name. The Third Respondent currently has 8 directors and not 5.

75.2. The windeed extract **(AC4)** is more than a year and a half old.

76. **AD PARAGRAPH 8**

76.1. I deny that the content is true and correct. This will become evident from this answering affidavit.

77. **AD PARAGRAPH 9**

77.1. The content herein contained is noted.

78. **AD PARAGRAPH 10**

78.1. It is admitted that the Third Respondent was established by the same individuals who control the Second Respondent.

78.2. It is denied that the Third Respondent's directors are the same as the Second Respondent's current committee.

79. **AD PARAGRAPH 11**

79.1. Save to admit that the Third Respondent was registered in 2016, the balance is denied.

79.2. The Third Respondent was registered long before the SRA process was considered. The Third Respondent was established to hold donations which were procured by the SFBRA in 2016. The Third Respondent is now the

managing body of the SRA. However, this was not the reason why the Third Respondent was initially registered.

80. **AD PARAGRAPH 12**

80.1. The First Respondent admits the nature of the application but denies that the Applicant is entitled to the relief sought and this will become evident hereunder.

81. **AD PARAGRAPH 13**

81.1. The content is admitted.

82. **AD PARAGRAPH 14**

82.1. The content is noted.

82.2. The Applicant's purported immediate concern being the decision to "*establish a SRA in a narrowly defined portion of Ward 12*" is not understood. The Policy empowered by the By-Law permits the establishment of a SRA which is defined as a geographical area within the area jurisdiction of the Municipality determined or to be determined by the

council as a SRA in terms of section 22 of the Act and Part A of the Policy.

This has taken place.

82.3. The First Respondent is under no obligation to establish SRA in terms of Ward structures.

83. **AD PARAGRAPH 15**

83.1. I reiterate what has been stated above regarding the Applicant's constitution.

Accordingly, the First Respondent makes no admissions in this regard.

84. **AD PARAGRAPH 16 (Inclusive of 16.1 – 16.3)**

84.1. The content herein contained is admitted.

85. **AD PARAGRAPH 16.4**

85.1. The First Respondent denies that the population is 2 200 persons. The area encircled in AC5 includes the residents of the Sea Vista township, Cape St Francis and the Links. The population is thus greater than 2 200. In any event the population increases three to four times over the December holiday period, compared to other months in the year.

85.2. It is also denied that many, if not most of the permanent residents are retirees.

85.3. The balance is admitted.

86. **AD PARAGRAPH 16.5**

86.1. Save to state the number of the rateable properties in the demarcated area has been detailed hereinbefore and differs from that of the Applicant's, the balance is admitted.

87. **AD PARAGRAPH 16.6**

87.1. It is admitted that the demarcated area comprises of a small portion (in size only) of Ward 12. In monetary terms the demarcated area comprises of property assets (houses) valued at approximately R4 billion. The total value of all property assets in the Greater St Francis Bay area inclusive of Santareme, St Francis on Sea, the Port and Otter's Landing amounts to approximately R6 billion.

87.2. In other words this “*very small part*” comprises a considerable portion of the overall property value of the Greater St Francis Bay area.

87.3. In terms of rateable properties, there are 1 590 rateable properties in the demarcated area and a total of 2 840 rateable properties in the Greater St Francis Bay area.

88. **AD PARAGRAPH 16.7**

88.1. The content is admitted.

89. **AD PARAGRAPH 17.1**

89.1. The content is admitted, save to state that the Second Respondent does not represent Cape St Francis or Sea Vista. Sea Vista comprises both of formal residences and an informal settlement. Both Cape St Francis and Sea Vista have their own ratespayers’ associations.

90. **AD PARAGRAPH 17.2**

90.1. It is denied that the Second Respondent’s main focus, if not its only focus, over recent years has been the creation of a SRA.

90.2. The Second Respondent has also focused over the years on a number of other issues such as the development of the St Francis Vision 2030 and its publication; fund raising for projects such as upgrading of crickets nets and pathways linking Sea Vista and the central business district, participating in the St Francis Bay Police Sector forum, monitoring traffic signage, pothole repairs and storm water drain repairs.

90.3. The object of the Second Respondent, to look after the interests of property owners/residents in the St Francis Bay area, is admitted.

91. **AD PARAGRAPH 17.4 (inclusive of 17.4.1)**

91.1. The content is admitted, save to state that it is not only the spit which is affected by the erosion of the sea. The entire beach area is being eroded. The spit comprises of only one third of the entire length of the beach.

92. **AD PARAGRAPH 17.4.2**

92.1. The content is admitted, save to reiterate that efforts which were made were not limited only to the spit but to restoration of the entire beach.

93. **AD PARAGRAPH 17.4.3 and 17.5 [sic]**

93.1. The content is admitted. The First Respondent does not have the finances to do so independently.

94. **AD PARAGRAPH 17.6**

94.1. The content herein contained is admitted, save that:

94.2. I reiterate what is stated above regarding the reason behind the establishment of the Third Respondent; and

94.3. The date of the AGM referred to in annexure **AC8** should be “2016” and not “2015”. This is evident from the second paragraph of the document which refers to the DA (Democratic Alliance) taking control of the municipality in the August 2016 elections.

94.4. The AGM held in December 2016 was the first time that a SRA proposal was discussed with the members in attendance.

95. **AD PARAGRAPH 17.7**

95.1. The content is admitted, save to reiterate that it was at the AGM in December 2016.

96. **AD PARAGRAPH 17.8**

96.1. The Applicant's generality is once again denied. The protection of the spit is not the Third Respondent's sole object.

96.2. The memorandum of agreement (AC9) was in regard to the revetment repair work allowed under Phase 1 Authorisation order in terms of the Department of Economic Development, Environmental and Tourism (DEDEAT) which spanned across the entire length of the beach (some 2.7 km's) including the spit. The memorandum of agreement envisaged that the First Respondent would extend the existing rock revetment along the full length of the spit, and was not limited to the spit alone.

96.3. This was an unsuccessful attempt to alleviate the spit and other associated problems.

97. **AD PARAGRAPH 17.9**

97.1. The content herein contained is admitted, save to state that clause 1 makes mention of repairs to the beach as well.

98. **AD PARAGRAPH 17.10 – 17.11**

98.1. The content is admitted. These historical events took place prior to the SRA and were to alleviate the problems referred to in the memorandum of agreement.

99. **AD PARAGRAPH 17.12**

99.1. It is assumed that reference to the Third Respondent in the first line of this paragraph should be the First Respondent.

99.2. The content is in any event denied.

99.3. The Third Respondent did not have the financial capability to take on responsibility for repairing the spit in 2016.

99.4. The establishment of the SRA was primarily motivated as the First Respondent was unable to attend to the infrastructure problems with *inter alia* the beach and spit. The conclusion of **AC9** was one of the ways in

which the First Respondent took steps (albeit unsuccessful) to alleviate these problems.

100. **AD PARAGRAPH 17.13**

100.1. The content herein contained is admitted. This was the first SRA proposal.

101. **AD PARAGRAPH 17.14**

101.1. I admit that from December 2016 the Second Respondent commenced motivating the establishment of a SRA.

101.2. I deny that the proposal was shelved on account of not receiving a majority vote. The SRA proposal was placed on hold to afford the First Respondent time to relook at its By-Law and Policy and to make amendments where it deemed appropriate to accommodate SRA applications.

101.3. The Second Respondent experienced difficulties in collecting votes. This has been discussed above. The voting process was not completed and therefore it is incorrect to state that the vote did not achieve a majority.

101.4. I admit that the geographical area was redrawn to include only the demarcated area (being the Canals and the Village). This was to make the process of collecting votes more manageable, as to collect votes across the Greater St Francis Bay area would have been a mammoth task for a voluntary organisation in less than 2 months, in order to comply with the SRA Policy, with approximately 80% or more of property owners not residing in St Francis Bay. As such a decision was taken to reduce the demarcated area into a smaller, more manageable group. Further reasons for the change in demarcated area have been discussed above, and are reiterated herein.

102. **AD PARAGRAPH 17.15**

102.1. The content herein contained is admitted.

103. **AD PARAGRAPH 17.16**

103.1. I admit that during the 2017 vote there was uncertainty only in regard to the votes attributed to sectional title units. This issue was satisfactorily resolved prior to the voting process in 2018.

103.2. The balance of this paragraph is denied.

103.3. There was no dispute as to who was entitled to vote in regard to the revised SRA proposal. The details of those eligible to vote are contained in the Policy as read with the Act. Full disclosure of the number of Erven and sectional title units have been addressed above.

103.4. The allegation that there has been a non-disclosure in this regard should be rejected outright.

104. **AD PARAGRAPH 17.17**

104.1. This aspect was dealt with under the heading of background. The notice was not published on 18 December 2017 but on 30 November 2017.

104.2. The balance of this paragraph is admitted.

105. **AD PARAGRAPH 17.18 – 17.19**

105.1. The content herein contained is admitted. The aspect of this meeting was dealt with under the heading of background. This meeting was part of the public participation process to introduce the proposed new By-Law and Policy.

106. **AD PARAGRAPH 17.20**

106.1. The Applicant's wide sweeping and gratuitous statement in this paragraph is denied.

106.2. The aspect of the amendment to the By-Law and Policy and the participation process is detailed at length under heading of background.

107. **AD PARAGRAPH 17.21**

107.1. The content is admitted.

108. **AD PARAGRAPH 17.22**

108.1. It is admitted that the draft By-Law was passed by the First Respondent's council on 19 December 2017.

108.2. The amended By-Law was then published in the Government Gazette on 29 December 2017. The By-Law was not sent to the government printer "*long before the date upon which public comment closed*".

108.3. The aspect is also dealt with under the heading of background.

109. **AD PARAGRAPH 17.23**

109.1. The content is admitted.

110. **AD PARAGRAPH 17.24**

110.1. Save to state that the Policy was adopted on 19 December 2017, the balance is admitted.

111. **AD PARAGRAPH 17.25**

111.1. The content herein contained is admitted.

112. **AD PARAGRAPH 17.26 (Inclusive of 17.26.1 – 17.26.5)**

112.1. Save to reiterate that publication of the By-Law took place on 29 December 2017 **(AC11)** and not on 20 December 2017, the balance of these paragraphs are admitted.

112.2. I reiterate what has been stated above regarding the re-vote. This was the first time a vote took place on the revised SRA proposal.

113. **AD PARAGRAPH 17.27 – 17.28**

113.1. The content herein contained is admitted.

114. **AD PARAGRAPH 17.29**

114.1. Save to deny the speculative and unsubstantiated statement that it is common knowledge that approximately half of the property owners in the demarcated area are in arrears, the balance is admitted.

114.2. This statement is factually incorrect, unsubstantiated, amounts to hearsay and stands to be struck out. The wording of the question posed and answer thereto is evident from the minutes appearing at **AC15**.

114.3. Debt collection and credit control is and remains an issue for the First Respondent. The First Respondent is not unique. This is a concern of all Municipalities in the country. This difficulty is being continuously addressed and has been prioritised by the First Respondent. The First

Respondent has improved its debt collection/recovery and at present enjoys an approximate 90% payment rate throughout its jurisdiction.

114.4. The arrears alluded to in this paragraph are not arrears in the true sense. St Francis Bay is a holiday destination. Many homeowners are not resident in St Francis Bay. They receive their municipal statements late (either because of practical difficulties such as postal strikes, incorrect billing addresses and the like, or because they only come to their homes a few times a year and collect their posted statements late) and pay them late. Many homeowners also pay their rates on an annual basis as opposed to monthly.

114.5. The public meetings afforded the First and Second Respondents with an opportunity to address the community and encourage members to pay their municipal bills timeously.

115. **AD PARAGRAPH 17.30 (inclusive of 17.30.1 – 17.30.5)**

115.1. The content herein contained is admitted. I reiterate what has been stated above regarding it being the first occasion that members of the public voted on the revised SRA proposal.

116. **AD PARAGRAPH 17.31**

116.1. The content herein contained is denied.

116.2. The Second Respondent initiated the process for the establishment of the SRA, as it is entitled to do in terms of the Policy. The First Respondent was present at the public meetings, and its attendance is minuted. The First Respondent processed and ultimately approved the application, as it is empowered to do in terms of the Policy.

116.3. The First Respondent collects the special levy from owners in the demarcated area. These funds (less an administrative fee) are then paid over to the Third Respondent.

116.4. The relationship between the First and Third Respondents remains symbiotic. It cannot be said that the First Respondent played no role whatsoever.

117. **AD PARAGRAPH 17.32**

117.1. The content herein contained is admitted.

117.2. On an on-going basis the Second Respondent endeavours, by alternative methods, to procure additional funding to relieve the financial burden on those subject to the SRA levy, such as organising events like golf days, procuring funds from private company donors or from the government itself.

117.3. The SRA levy only accounts for R75 million, whereas the cost of restoring the beach and spit is estimated at R115 million.

118. **AD PARAGRAPH 17.33.1**

118.1. Reference to the Third Respondent in the second line of this paragraph is incorrect, and should be the First Respondent. Save for the above, the balance is admitted.

119. **AD PARAGRAPH 17. 33.2**

119.1. The content herein contained is admitted.

120. **AD PARAGRAPH 17.33.3**

120.1. The content is noted. Reference to “*the Port*” is Port, St Francis.

121. **AD PARAGRAPH 17.33.4**

121.1. The content is admitted.

122. **AD PARAGRAPH 17.34 (Incorporating 17.34.1 – 17.34.2)**

122.1. The content herein contained is admitted. I reiterate what has been stated above regarding the in-kind contribution by the First Respondent of R3 million.

123. **AD PARAGRAPH 17.34.**

123.1. The content herein contained is admitted. The KJRC had undertaken to commit, however, the question which remained was the amount of the contribution.

123.2. The KJRC was going to raise its contribution from boat and river licenses and the balance from donations from the private estates in the Kromme River.

124. **AD PARAGRAPH 17.34.4**

124.1. The content herein contained is admitted. The methods of voting have been detailed above.

125. **AD PARAGRAPH 17.35**

125.1. The content herein contained is admitted.

126. **AD PARAGRAPH 17.36 – 17.38**

126.1. The content herein contained is admitted, save to deny that this was the first time that the First Respondent was involved.

127. **AD PARAGRAPH 17.39**

127.1. The content is admitted. The noteworthiness thereof is denied.

127.2. Clause 4.3.5 of Part A of the Policy provides that the application must be accompanied by *“proof to the satisfaction of the Municipality that a majority of owners of the rateable property within the proposed SRA have approved the proposed SRA business plan and have consented to the establishment of the proposed SRA.”*

127.3. As at date of lodging of the application (being 23 February 2018) the Second Respondent had already obtained a majority vote in favour of the SRA. These hardcopy votes were submitted to the First Respondent and accordingly, the requirement was met, albeit the day before the voting process closed.

128. **AD PARAGRAPH 17.40**

128.1. It is admitted that objections were received. However, it is denied that “*numerous objections*” were received. A total of 39 objections were received including one received outside of the window period.

128.2. Predominantly the SRA proposal found favour with those in the demarcated area, and the majority vote speaks to this.

129. **AD PARAGRAPH 17.41**

129.1. The content is admitted insofar as it correctly accords with **AC21**, however, it is denied that there are any merit to these objections. The First Respondent has complied with the relevant legislative framework, and this has been illustrated hereinbefore.

130. **AD PARAGRAPH 17.42**

130.1. The content is admitted, save to deny that there is any merit in the objections.

131. **AD PARAGRAPH 17.43 (Incorporating 17.43.1 – 17.43.3)**

131.1. The content is admitted insofar as it relates to the Act. The provisions in the Act were amplified by the By-Law and Policy. Reference to the Act in isolation is inappropriate.

131.2. Further legal argument will be advanced at the hearing of this application. There is nothing in section 22 which is inconsistent with the Policy.

131.3. The community was consulted in regard to the proposed boundaries, the proposed improvements and majority consent was achieved.

132. **AD PARAGRAPH 17.44**

132.1. The interpretation placed on this section by the Applicant is denied. The Act has been amplified by the By-Law and Policy. There is nothing in section 22

of the Act which is inconsistent with the Policy. Further legal argument will be advanced at the hearing of this application.

133. **AD PARAGRAPH 17.45**

133.1. The content is admitted. This objection was considered.

134. **AD PARAGRAPH 17.46**

134.1. The content is admitted, save to deny that there is any merit in the objection.

The irregularities and deficiencies are denied.

135. **AD PARAGRAPH 17.46.1**

135.1. The content is denied. The figures are incorrect. The redefined SRA demarcated area has been addressed hereinabove.

136. **AD PARAGRAPH 17.46.2**

136.1. The content is denied. A snapshot of the First Respondent's debtors as at a point in time in December 2017 was made available to members attending the public meeting. This comprised of 44%.

136.2. I reiterate what has been stated above about this figure not representing the true arrears for the reasons already mentioned.

137. **AD PARAGRAPH 17.46.3**

137.1. The content is denied. The contribution of R3 million is entirely unrelated to arrear rates. The Applicant has completely misconstrued this issue. The First Respondent allocated R3 million budget-spend (an amount assigned by the Second Respondent) on capital maintenance projects and services. It was intended to be an in-kind contribution. I reiterate what has been stated above on this issue.

138. **AD PARAGRAPH 17.46.4**

138.1. The content herein contained is denied. All relevant documentation can still be accessed on the Second Respondent's website. This allegation is also unsubstantiated.

139. **AD PARAGRAPH 17.46.5**

139.1. The content is denied. The reason behind why the demarcated area was redefined has been detailed above, and cannot be said to be irregular or manipulated.

140. **AD PARAGRAPH 17.46.6**

140.1. The content herein contained is denied. The community (not limited to the proposed demarcated area) was asked for feedback. Public meetings were open to all members of the public. Similarly, any member of the public could object to the application. All objections were considered.

141. **AD PARAGRAPH 17.47**

141.1. The content is admitted.

142. **AD PARAGRAPH 17.48**

142.1. The content is admitted insofar as it correctly accords with **AC24**. The First Respondent denies however that there are shortcomings in the procedure adopted or merit in the objection.

143. **AD PARAGRAPH 17.49 (Incorporating 17.49.1)**

143.1. The content is admitted, insofar as it correctly accords with the letter. The First Respondent reiterates that the restoration is not limited to the spit.

144. **AD PARAGRAPH 17.49.2**

144.1. The content is denied. Provision has been made to accommodate those who cannot afford the special levy. The relief programme has been discussed above.

144.2. Provision is also made in the Property Rates Policy itself for exemptions and rebates. I pause to mention that as the SRA levy comprises of a percentage payable in respect of an owner's rates, if an owner is already subject to a rebate or exemption, their SRA levy will automatically include such a rebate/exemption.

145. **AD PARAGRAPH 17.49.3**

145.1. The content is admitted, however, the Act cannot be read in isolation as it has been amplified by the By-Law and the Policy.

145.2. The Second Respondent meets the requirements of an '*applicant*' in terms of the clause 1.3 of Part A of the Policy. Further legal argument will be advanced at the hearing.

146. **AD PARAGRAPH 17.49.4**

146.1. The content is denied. The Third Respondent is a public non-profit company. All relevant information on its establishment is available for inspection through the appropriate channels.

147. **AD PARAGRAPH 17.49.5**

147.1. The content is denied. The public/community participation has been dealt with extensively hereinbefore.

148. **AD PARAGRAPH 17.49.6**

148.1. The content is admitted, save that the Applicant cannot reference only the Act. The Act has been amplified by the By-Law and Policy.

148.2. The determination of the area and the proposed boundaries, improvements and upgrading were discussed (in consultation with the local community) at

the public meetings. This area was then determined by the First Respondent in approving the SRA application received from the Second Respondent.

148.3. The First Respondent complied with the obligations placed on it.

149. **AD PARAGRAPH 17.49.7 – 17.49.8**

149.1. The content is denied. The First Respondent has complied with the Policy.

Further legal argument will be advanced at the hearing of the application.

149.2. Objections (or comments) were received and considered by the First Respondent's council outside of the prescribed window period.

150. **AD PARAGRAPH 17.50**

150.1. The content herein contained is denied.

151. **AD PARAGRAPH 17.51**

151.1. The content is admitted.

152. **AD PARAGRAPH 17.52 (Incorporating 17.52.1 – 17.52.2)**

152.1. Without conceding that there is any merit in this objection, the content is admitted insofar as it correctly records with AC25.

152.2. The percentage of 19% is denied, so too is the purported lack of consultation.

153. **AD PARAGRAPH 17.52.3**

153.1. The Policy allows for owners to vote irrespective of whether they are in arrears or not, accordingly, same is denied.

154. **AD PARAGRAPH 17.53**

154.1. Without conceding that there is any merit in this objection, the content is admitted insofar as it correctly records with AC26.

155. **AD PARAGRAPH 17.53.1**

155.1. It is denied that this notice was irregular in any way.

155.2. The relevant window period in terms of clause 7.1 of Part A was utilised by the First Respondent to receive objections. All objections were considered, even an objection which was received outside of the prescribed window period was placed before the council.

156. **AD PARAGRAPH 17.53.2**

156.1. The content is denied. In any event this allegation is bald and unsubstantiated and constitutes inadmissible evidence.

156.2. The application was available for inspection as advertised.

157. **AD PARAGRAPH 17.53.3**

157.1. I reiterate what has been stated above regarding the prescribed format.

158. **AD PARAGRAPH 17.53.4**

158.1. The content is denied. In any event this allegation is non-specific and does not constitute admissible evidence.

158.2. The votes were verified by the First Respondent's attorneys of record, following a meticulous process. A number of yes votes were disqualified as detailed hereinabove.

159. **AD PARAGRAPH 17.53.5**

159.1. The content is denied. Reference to Third Respondent in this paragraph should be First Respondent. This aspect was dealt with in the application and has been discussed above.

160. **AD PARAGRAPH 17.53.6**

160.1. The content is denied. These allegations are non-specific and unsubstantiated and do not constitute admissible evidence.

161. **AD PARAGRAPH 17.53.7**

161.1. The content herein contained is denied. The amendment did not constitute an annual review edition. Furthermore, the allegation is unsubstantiated and does not constitute admissible evidence.

162. **AD PARAGRAPH 17.53.8**

162.1. The content is denied and has been discussed hereinbefore. There has not been a contravention of clause 4.3.6.4 of the Policy.

163. **AD PARAGRAPH 17.54 – 17.55**

163.1. The content is admitted.

164. **AD PARAGRAPH 17.56**

164.1. It is admitted that the representing attorney addressed the council. The attorney represented the First Respondent. The Second and Third Respondents were unrepresented at the council meeting. They were also not in attendance. Nor was there an obligation on the First Respondent to afford any persons the opportunity to address the council.

164.2. All objections received had been considered and processed by the First Respondent. This is evident from the agenda to the meeting.

164.3. No affected persons requested an audience with the council.

165. **AD PARAGRAPH 17.57**

165.1. The content is admitted insofar as it correctly accords with AC27.

166. **AD PARAGRAPH 17.58**

166.1. The content herein contained is admitted insofar as it records correctly with AC27.

166.2. The council had to meet to discuss the SRA application if it were to include it in its upcoming budget. Accordingly, it could not have been postponed for a further month, as such it was urgent.

167. **AD PARAGRAPH 17.59 (Incorporating 17.59.1)**

167.1. The content is admitted insofar as it correctly accords with AC27.

167.2. It was never the intention of the First Respondent that it would contribute money towards the SRA fund. The SRA levy imposed was to enable the community (within the demarcated area) to contribute financially to the improvement of the infrastructure.

167.3. The First Respondent undertook to contribute its own spend on these infrastructure assets, as an in-kind contribution. This aspect has been detailed above.

167.4. The removal of the R3 million had no budgetary implications on those subject to the SRA levy.

168. **AD PARAGRAPH 17.59.2**

168.1. The content is admitted insofar as it correctly accords with AC27. This entailed that the Second and Third Respondents had to manage the effect of bad debt on its revenue and expenditure forecasts and commitments.

168.2. The Applicant's understanding of the application of funds towards arrears is incorrect. By way of illustration the application towards arrears is as follows: if a property owner receives a municipal invoice for July 2018 in the sum of R3 500.00 and only pays R3 200.00 (the shortfall of R300.00 being in respect of the SRA levy), there will be an arrears component of R300.00. The SRA levy, being the latest edition to the municipal account, has the lowest priority of all the municipal charges. The SRA levy will thus not be paid over to the Third Respondent. If the property owner again short-pays his invoice for August 2018 in respect of the SRA levy, the First

Respondent attributes the payment received towards the oldest debt first (being his SRA levy for July 2018). This means that there will be a shortfall build up against the next priority, which may ultimately result in municipal services being cut-off/terminated.

169. **AD PARAGRAPH 17.59.3**

169.1. The Applicant's understanding of the amendment is denied. The SRA levy is fixed at 25%, when the First Respondent approved the SRA business plan. There is no fluctuation or determining of the levy on an ad hoc basis.

170. **AD PARAGRAPH 17.59.4**

170.1. The interpretation of this amendment is denied. This aspect has been dealt with hereinbefore.

171. **AD PARAGRAPH 17.59.5**

171.1. The content is admitted insofar as it correctly records with **AC27.**

172. **AD PARAGRAPH 17.60**

- 172.1. The Applicant has not detailed in what manner it has made attempted to obtain a copy of the agenda, as such the First Respondent is not in a position to admit same.
- 172.2. The First Respondent denies that the objections were not placed before the council. A copy of the First Respondent's Agenda for the special council meeting has been dealt with hereinbefore. Accompanying the agenda was a letter dated 23 May 2018 (forming part of **CDP19** and numbered at the foot of the document pages 4 - 6).
- 172.3. In last paragraph of this letter under heading "*background*" the council was advised that "*the municipality received such an application and called for objections from interested parties. In response to this the municipality received a number of objections, but none of these objections are considered material enough to prevent such an establishment of a special ratings area.*"
- 172.4. The letter attaches to it as annexure F a list of all objections received (and includes an objection received outside of the window period). This annexure was dealt with hereinbefore.
173. **AD PARAGRAPH 17.61 (Incorporating 17.61.1 – 17.61.9)**

173.1. Insofar as the content of these paragraphs correctly accord with AC28, same is admitted.

174. **AD PARAGRAPH 17.62**

174.1. The finance agreement was approved and executed. It is denied that there was an obligation on the First Respondent to communicate this to anyone.

175. **AD PARAGRAPH 17.63**

175.1. The First Respondent admits receipt of AC29. The First Respondent's attorneys made representations at the council meeting. The Applicant in the SRA application (the Second Respondent) was not present or represented at the meeting.

175.2. The Applicant did not seek an audience with the First Respondent's council. All objections received were considered, including those of attorney Van Rensburg.

175.3. The *audi alteram partem* principle was not violated. Attorney Van Rensburg did not request an audience.

176. **AD PARAGRAPH 17.64**

176.1. The content of this paragraph is admitted. The First Respondent denies that it is entitled to review the decision or that the levy should have been placed on hold.

177. **AD PARAGRAPH 17.65**

177.1. The content herein contained is admitted.

178. **AD PARAGRAPH 17.66 (Incorporating 17.66.1 – 17.66.3)**

178.1. The content of these paragraphs are admitted insofar as they accord with **AC30**. This letter was received well after window period for objections (as prescribed in clause 11 of Part A of the Policy) and subsequent to the approval of the SRA application.

178.2. It is denied that objections were not considered. No one asked for an opportunity to state their case at the council meeting.

178.3. It is denied that no provision is made for rebates or for those who cannot afford the levy. This aspect is dealt with hereinbefore.

178.4. It is denied that the financial model is questionable.

178.5. In any event these allegations are unsubstantiated and bald and do not constitute admissible evidence.

179. **AD PARAGRAPH 17.67**

179.1. The contribution by the First Respondent has been dealt with hereinbefore.

The Applicant is misconstruing the import of the contribution.

180. **AD PARAGRAPH 17.68**

180.1. The content herein contained is admitted.

181. **AD PARAGRAPH 17.69**

181.1. It is admitted that **AC31** was circulated. It is denied that this email was circulated in response to an impending backlash.

181.2. The means test was devised to assist those owners who are unable to afford the SRA levy. The means test is not administered by the Second or Third Respondents. The Second and Third Respondent do not determine who qualifies in terms of the means test. This is self-evident from the content of **AC31**. Similar relief programmes are being administered in other SRA's.

182. **AD PARAGRAPH 17.70**

182.1. The content is admitted. It is denied that there is anything untoward or incredible about the operation of this relief programme. Similar relief programmes are being administered in other SRA's.

183. **AD PARAGRAPH 17.71**

183.1. The content of **AC32** is admitted.

183.2. The relief programme is being administered and to date there has been two applications, one of which has been granted.

184. **AD PARAGRAPH 17.72**

184.1. The content of annexure **AC33** is admitted. The First Respondent suffered technical difficulty initially in identifying the SRA levy as a separate charge on its municipal account. This was rectified on the following month's invoice. The municipal invoice now reflects the SRA levy as a separate line item.

184.2. There is an increase of 25% in terms of the SRA levy.

185. **AD PARAGRAPH 17.73**

185.1. The content is denied. The Applicant has miscalculated the SRA levy. The First Respondent's administrative fee is deducted off the levy imposed. The balance of the SRA levy (full levy less the administrative fee) is paid over to the Third Respondent. This is detailed in the finance agreement (**CDP21**).

185.2. Owners within the demarcated area not being levied in excess of 25%.

186. **AD PARAGRAPH 18.1 (Incorporating 18.1)**

186.1. The First Respondent takes issue with the Applicant's history of the matter. The Applicant's history is peppered with inaccuracies, conjecture and incorrect deductions.

186.2. It is further denied that the By-Laws and/or Policy are unconstitutional. This issue will be dealt with in further detail hereunder. Further legal argument will be advanced at the hearing.

187. **AD PARAGRAPH 18.2 – 18.3**

187.1. The contention that the SRA was far from unanimous is irrelevant. A majority vote for the establishment of the SRA was achieved. A unanimous vote is not required.

187.2. It is admitted that objections were received. These objections were considered and found to be without merit.

188. **AD PARAGRAPH 18.4**

188.1. The content herein contained is denied. Objections received (even outside of the prescribed window period) were considered. This is evident from the agenda for the municipal council meeting held on 23 May 2018.

189. **AD PARAGRAPH 18.5**

189.1. The content herein contained is denied.

190. **AD PARAGRAPH 19 – 20 (Incorporating 20.1 – 20.3)**

190.1. The content is admitted, insofar as it correctly accords with the Act.

191. **AD PARAGRAPH 21 - 23**

191.1. The content herein contained is denied. Further legal argument will be advanced at the hearing.

192. **AD PARAGRAPH 24 (Incorporating 24.1)**

192.1. The content is herein denied. The Applicant persistently applies the Act (and in particular section 22 thereof) in insolation. The By-Law and Policy entitles an Applicant, such as the Second Respondent, to apply for the establishment of a SRA.

192.2. The Policy further prescribes the form of the application which includes *inter alia* the area, the proposed additional rate and differentiated categories of properties. The Second Respondent met these requirements in its

application, which was ultimately accepted by the First Respondent's municipal council.

192.3. The Property Rates Policy (not Part A) contains provisions relating to differential rates/categories of properties. As the SRA levy comprises of a percentage of an owner's rates payable in respect of a property, the SRA levy will already have built in this consideration in its percentage.

192.4. The final decision of the First Respondent, in resolving to accept the SRA application, complied with section 22 of the Act.

192.5. There is nothing in section in section 22 of the Act that is inconsistent with the Policy.

193. **AD PARAGRAPH 24.2**

193.1. The content is denied. The application was initiated by the Second Respondent in terms of the Policy. The First Respondent participated in the public participation process, and approved the application. The role of the First Respondent has extensively been detailed hereinbefore.

194. **AD PARAGRAPH 24.3**

194.1. The content is denied. The rationale behind limiting the demarcated area to the Canals and Village has been detailed above.

194.2. The First Respondent approved the SRA application which included the demarcated area. The First Respondent also participated in the public meetings where this aspect was addressed. It is denied that there was no input from the First Respondent in regard to determining the area. It has complied with this requirement.

195. **AD PARAGRAPH 24.4**

195.1. It is denied that the First Respondent did not determine an additional rate. The additional rate was determined when the First Respondent's council resolved to accept the SRA application. The First Respondent met this requirement.

195.2. The SRA levy to be imposed was detailed in the application, which was accepted by the municipal council at its meeting on 23 May 2018 (**AC27**).

195.3. The contention that the SRA levy had to be negotiated between the Municipal Manager and the Third Respondent is denied. This was the

administration fee, which was to be deducted from the SRA levy. The SRA levy was fixed at 25%.

196. **AD PARAGRAPH 24.5**

196.1. The content is denied. I reiterate what was stated above regarding the differentiation of categories of properties.

197. **AD PARAGRAPH 24.6**

197.1. The content herein contained is denied.

198. **AD PARAGRAPH 25 (Incorporating 25.1)**

198.1. The content is denied. Extensive public participation took place. The community was consulted and the First Respondent played an integral role in the public participation process. This has been detailed extensively hereinbefore.

198.2. In approving the SRA application, and making its final decision, the First respondent complied with the provisions of section 22 of the Act.

199. **AD PARAGRAPH 25.2 (Incorporating 25.2.1 – 25.2.4)**

199.1. The content is denied, save to admit the content of section 1. Three public meetings took place over the December/January holiday period. This was to accommodate holiday makers and visitors. All members of the public were entitled to attend these meetings, ask questions and/or provide their input. These public meetings were advertised in numerous publications circulating in the area.

199.2. All members of the public were invited to view the application and object if they were so inclined. A number of members availed themselves of the opportunity. These objections were considered.

200. **AD PARAGRAPH 25.3**

200.1. The content is denied. The consultative process took place with the public at large, and not just those owners within the demarcated area.

200.2. All members of the local community were consulted by both the First and Second Respondent. This is detailed extensively in the background of this affidavit.

201. **AD PARAGRAPH 25.4**

201.1. It is denied that the First Respondent has abrogated its responsibilities in terms of section 22 of the Act or otherwise. The First Respondent's participation in the establishment of the SRA is well documented and has been detailed extensively hereinbefore.

201.2. Further legal argument will be advanced at the hearing of this application.

202. **AD PARAGRAPH 25.5**

202.1. The content herein contained is denied.

203. **AD PARAGRAPH 26 (Incorporating 26.1)**

203.1. The content herein contained is denied. Clause 4.3.5 of Part A of the policy provides that the application for the establishment of a SRA must be accompanied by proof to the satisfaction of the municipality that the majority of owners within the proposed SRA have approved the proposed business plan and consented to the establishment of the proposed SRA.

203.2. There is no suggestion in the Policy that the Applicant in the SRA application (the Second Respondent) cannot manage the voting process.

203.3. In fact the contrary is true, as long as proof is provided to the satisfaction of the First Respondent.

203.4. The votes were independently verified by the First Respondent's attorneys of record, acting on the First Respondent's instruction.

204. **AD PARAGRAPH 26.2**

204.1. It is denied that the voting took place in an irregular manner. The votes were tallied and verified by the First Respondent's attorneys of record, acting on their instruction.

204.2. All owners (as defined in the Act) within the demarcated area were entitled to vote.

204.3. The manner in which voters were identified has been detailed above. A number of votes were disqualified during the verification process as the voter could not be sufficiently identified.

204.4. There was no abuse in the process. This allegation is also unsubstantiated.

The Applicant does not mention what abuse took place.

205. **AD PARAGRAPH 26.3**

205.1. It is denied that there should have been a secret ballot. This contention finds no support in the Act nor in the Policy.

205.2. This is no different to members voting by show of hands at a public meeting.

206. **AD PARAGRAPH 26.4**

206.1. The Applicants will find no basis for the contention in the Act nor in the Policy that the public is entitled to a full breakdown of the votes.

206.2. The council was provided with a full breakdown of the votes. This is evident from the Agenda and the attachments thereto.

207. **AD PARAGRAPH 26.5 – 26.7**

207.1. The content is denied. A majority of the owners within the demarcated area (and not just those who physically voted) voted in favour of the SRA.

207.2. This aspect was dealt with at the public participation meeting on 11 January 2018 (**AC17**). This is also expressly detailed clause 4.3.5 of Part A of the Policy.

208. **AD PARAGRAPH 27.1 – 27.3**

208.1. These aspects have been dealt with hereinbefore, the content thereof is reiterated. The First Respondent has complied with its obligations in terms of section 22 of the Act in approving the SRA application.

208.2. It is also reiterated that there was nothing sinister in redefining the demarcated area. The rationale behind it has been discussed above.

208.3. The process is not flawed and does not stand to be reviewed.

209. **AD PARAGRAPH 28.1 – 28.3**

209.1. This aspect has been dealt with hereinbefore, the content thereof is reiterated.

209.2. In approving the SRA application the First Respondent met its obligations in terms of section 22 of the Act.

210. **AD PARAGRAPH 29.1**

210.1. The Applicant is once again interpreting the Act in isolation of the By-Law and Policy. I reiterate what has been stated hereinbefore.

210.2. The First Respondent has complied with its obligations in terms of the Act read with the By-Law and Policy. The First Respondent consulted with the public at large and not just a committee.

210.3. The committee envisaged in section 22(3)(d) is entirely different from the management body (Third Respondent).

211. **AD PARAGRAPH 29.2**

211.1. Save to deny that the Third Respondent will manage and spend the funds as it sees fit and that the First Respondent's oversight will be *ex post facto*, the balance is admitted.

211.2. It is incumbent on the Third Respondent to manage the funds in terms of the business plan and finance agreement, which were approved by the First Respondent. Thus the role of the First Respondent cannot be said to be *ex post facto*.

211.3. In particular clause 11.3 of Part A of the Policy provides that the First Respondent shall monitor compliance by the management body (the Third Respondent) with the applicable legislation, this Part (meaning Part A of the Policy), any guidelines or policies and any agreements entered into between the Municipality and the management body by:

211.3.1. 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

211.3.2. If it elects to do so, nominating a political representative to attend and participate, but not to vote, at the meetings of the management body (I pause to mention that this is a further safeguard built into the Policy to ensure compliance with the approved SRA business plan).

212. **AD PARAGRAPH 29.3**

212.1. It is denied that this constitutes a flaw (fatal or otherwise) in the process.

212.2. The By-Law and Policy specifically sanctions such a situation. The funds have to be applied in terms of the approved business plan and finance agreement. Funds will be spent wisely and as ear-marked.

213. **AD PARAGRAPH 29.4**

213.1. The content herein contained is denied.

214. **AD PARAGRAPH 30.1**

214.1. The content is admitted, save to state that the Applicant now contends that the residents within the demarcated area are largely privileged, whereas previously it has contended that:

214.1.1. Many, if not most, of the residents in the Greater St Francis Bay area are retired (paragraph 16.4 of the founding affidavit); and

214.1.2. Almost half of the owners in the demarcated area are in arrears with their rates (paragraph 17.29 of the founding affidavit).

215. **AD PARAGRAPH 30.2**

215.1. This aspect has been dealt with hereinabove. The content of this paragraph accordingly denied. The integrated development plan was considered.

216. **AD PARAGRAPH 30.3 – 30.5**

216.1. The content is admitted insofar as it correctly accords with **AC7** (and not AC6).

216.2. The objection is not understood. Regard was had to the Integrated Development Plan in the SRA business plan, which was endorsed by the First Respondent's municipal council. In any event the ward is not the same geographical area as the demarcated area. Therefore, its collective priorities cannot be said to be the same, as they do not cover the same area. The spit and beach area is more of a prioritised concern to the demarcated area (than Ward 12) given its location. I reiterate what has been stated in regard to this issue.

216.3. The balance of these paragraphs are denied. Further legal argument will be advanced.

217. **AD PARAGRAPH 31 – 31.5**

217.1. The content is denied. The Applicant is entirely misinterpreting the First Respondent's financial contribution. This has been dealt with extensively hereinabove, the content of which is reiterated herein.

217.2. The SRA has not suffered a loss of budget as contended.

218. **AD PARAGRAPH 31.6**

218.1. It is denied that the matter should have been referred back to the residents for consideration. There was no budget loss. The R3 million was never intended to form part of the SRA levy. It was an in-kind contribution, which the First Respondent will continue to contribute.

218.2. As such its removal from the SRA business plan did not result in any financial implications to those subject to the SRA levy.

219. **AD PARAGRAPH 32.1**

219.1. The content herein contained is admitted.

220. **AD PARAGRAPH 32.2 – 32.3**

220.1. The content herein contained is denied. The administrative fee is included in the 25% levy. The Applicant's calculation is incorrect.

221. **AD PARAGRAPH 32.4**

221.1. The content is denied. The First Respondent is entitled to charge an administrative fee. Clause 13.4 of Part A of the Policy provides for the conclusion of agreements between the municipality and the management body in regard to finances.

221.2. The finance agreement makes provision for the levying of an administrative fee by the municipality.

222. **AD PARAGRAPH 33 -34**

222.1. The content herein contained is denied. Further legal argument will be advanced.

223. **AD PARAGRAPH 35**

223.1. The content herein contained is admitted.

224. **AD PARAGRAPH 36 - 37**

224.1. It is admitted that section 22 of the Act makes provision for the establishment of a SRA by resolution of the municipal council.

224.2. This section was amplified by the By-Law and Policy which makes provision for such an application, which route was followed by the Second Applicant.

224.3. There is nothing in section 22 of the Act which is inconsistent with the Policy.

225. **AD PARAGRAPH 37.1**

225.1. The content is admitted.

226. **AD PARAGRAPH 37.2 – 37.3**

226.1. It is admitted that section 22(3)(d) of the Act makes provision for the establishment of a committee. This provision is not preemptory. The entire community was consulted in this process by the First Respondent.

226.2. The community envisaged in section 22(3)(d) is entirely different from the management body envisaged in the Policy. There is nothing in the Act which prohibits the First Respondent from appointing a service provider/agent (in the present instance the Third Respondent) in regard to the SRA.

226.3. The balance of these paragraphs are denied.

227. **AD PARAGRAPH 37.4**

227.1. The content herein contained is admitted insofar as it correctly accords with the Acts quoted.

227.2. The Third Respondent is not a private company acquired by the Municipality.

228. **AD PARAGRAPH 37.5**

228.1. The content herein contained is denied. Further legal argument will be advanced.

229. **AD PARAGRAPH 38 – 39**

229.1. It is admitted that clause 11 of the Policy makes provision for a management body. The balance of this paragraph is denied.

230. **AD PARAGRAPH 40**

230.1. For the reasons discussed hereinabove, it is submitted that the Applicant is not entitled to the relief sought.

231. Accordingly, the application stands to be dismissed with costs.

CHARL DU PLESSIS

SWORN to and **SIGNED** before me at _____ on this the ____ day of **NOVEMBER 2018**, the Deponent having acknowledged that he knows and understands the contents of the affidavit, has no objection to taking the prescribed oath and regards the oath as binding on his conscience.

COMMISSIONER OF OATHS