

**RUSTENBURG LOCAL MUNICIPALITY**



**DRAFT LAND ADMINISTRATION POLICY 2020**

## **TABLE OF CONTENTS**

### **CHAPTER 1: INTRODUCTION, INTERPRETATION AND PURPOSE OF THE POLICY**

1. Introduction
2. Definitions
3. Powers of Council
4. Objectives
5. Policy Principles

### **CHAPTER 2: ALIENATION OF LAND – LEASE AND SALE**

6. Categories of Municipal Properties
7. Manner of Disposal of Municipals' Various Properties
8. Lease/Letting of Land
  - 8.1 Lease periods not exceeding 12 months
9. Projections, projecting structures and encroachments
10. Out of hand sale and letting
11. Sale/Let of Land to Social Amenities and other spheres of Government
12. Unsolicited Proposals
13. Promotion of Economic Development on Previously Disadvantaged Areas and SMMEs

### **CHAPTER 3: LAND ACQUISITION**

14. Introduction
15. General Principles
16. Criteria for Acquisition
17. Methods for acquiring immovable property
18. Public Consultation
19. Approval process

### **CHAPTER 4: DISPOSAL OF RIGHTS IN IMMOVABLE ASSETS**

20. Servitudes

### **REVIEW PROCESS**

### **ANNEXURE 1: STEP/PROCEDURE FOR ALIENATING COUNCIL LAND**

## 1. INTRODUCTION

Rustenburg Local Municipality is a distressed mining town with limited land resources. In the exercise of its powers, duties and functions Council has the right to acquire, hold, enhance, lease and alienate immovable property. The inequitable spread of ownership of property throughout the Rustenburg area and the historical causes thereof are recognized, and Council acknowledges that it has a leading role to play in addressing these imbalances. Through ensuring that the immovable assets under its control are dealt with in a manner that ensures the greatest possible benefit to the strategic objectives of the municipality and the community it serves.

The objective of this policy is to provide a framework for the disposal or transfer of immovable assets or rights thereof, the management and use of Council's immovable property in the event that the property is not subject to disposal, in a manner that would support the strategic objective of the municipality contained in its Integrated Development Plan and the needs and aspirations of the community that it serves and the acquisition of land for the benefit of the municipality and its community.

## 1. DEFINITIONS:

- “Alienate”:** in relation to a sale of land means sell, exchange or donate, irrespective of whether such sale, exchange or donation is subject to a resolutive or suspensive condition;
- “Asset”** means a resource controlled by a municipality as a result of past events and from which future economic benefits or service potential are expected to flow to the municipality
- “Basic Municipal Service”:** means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment;
- “BBBEE”:** Broad Based Black Economic Empowerment in accordance with the Broad Based Black Economic Empowerment Act (Act No 53 of 2003) means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated

socio-economic strategies that include, but are not limited to:

- (a) Increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- (c) human resource and skills development;
- (d) preferential procurement; and
- (e) investment in enterprises that are owned or managed by black people;

**“Bid”:** means a written offer submitted in a prescribed or stipulated form, in response to the invitation by the Municipality for a procurement or disposal, as part of the competitive bidding process of the Municipality;

**“Capital Asset”:** means non consumable movable and immovable property, including land, owned by the Municipality;

**“Constitution”:** means the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996);

**“Contract”:** means a deed of alienation under which land is sold against payment by the purchaser to, or to any person on behalf of the seller an amount of money in more than two installments over a period exceeding one year;

**“Council”:** means a municipal council referred to in section 157 of the Constitution; means the Municipal Council of the Rustenburg Local Municipality, its legal successors in title and its delegates;

**“Disposal”** means process of preparing, negotiating and concluding a written contract which involve the alienation of a capital asset no longer needed by the Municipality or rights in respect thereof, by means of a sale, lease or donation, and **“dispose”** has a similar meaning;

- “Exempted Capital Asset”** means a municipal capital asset which is exempted by Section 14(6) and 90(6) of the Municipal Finance Management Act, Act 56 of 2003 (MFMA).
- “Fair Market Value”** in relation to capital assets, means the value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell the capital asset in an arm’s length transaction
- “Immovable property”** also includes-
- (a) An undivided share in immovable property, and;
  - (b) Any right in immovable property
- “Integrated Development Plan (IDP)”**: means the Integrated Development Plan of the Municipality as envisaged in section 25 of the Municipal Systems Act (Act No. 32 of 2000);
- “HDI”** means a Historically Disadvantaged Individual that is a South African Citizen:  
Who, due to the apartheid policy that has been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of the Republic of South Africa, 1993 (Act No. 56 Of 2003)
- (i) 1993) (“The Interim Constitution”); and / or
  - (ii) Who is female; and / or
  - (iii) Who has a disability;
- “High Value”**: in relation to a capital asset of a municipality, means that the fair market value of the capital asset exceeds any of the following amounts;
- (a) R50 million
  - (b) One percent of the total value of the capital assets of the municipality, as determined from the latest available audited annual financial statements of the municipality; or
  - (c) An amount determined by resolution of the Council of the municipality which is less than a) or b)

- “Market value”:** in relation to a property, means the amount a property would have realized if sold on the date of valuation in the open market by a willing seller to a willing buyer;
- “MFMA”:** means the Municipal Finance Management Act, (Act No. 56 of 2003);
- “Municipality”:** means the Rustenburg Local Municipality, and when referred to as:-  
(i) An entity, means a Municipality as described in Section 2 of the System Act;  
(ii) A geographic area means the municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998);
- “Municipal Manager”:** means the Municipal Manager of the Municipality as appointed in terms of the Local Government: Municipal Structures Act 32 of 2000;
- “Municipal Valuer”:** means a person designated as a municipal valuer in terms of section 33 (1) of the of the Municipal Property Rates Act no 6 of 2004;
- “Non- exempted capital asset”:** means a capital asset which is not exempted by section 14 (6) or 90(6) of the Municipal Finance Management Act, 2003 (MFMA) from the other provisions of that section;
- “Previously Disadvantaged Individuals (PDI)”:** means persons who were previously disadvantaged by unfair discrimination and who, in terms of section 9(2) of the Constitution, may be protected and advanced to achieve equality and, for the purposes of this policy, includes the following designated groups:  
(a) Men of African, Asian or coloured descent;  
(b) Women, irrespective of descent; and (c) disabled persons, irrespective of descent;
- “Property”** means-

- (a) Immovable property registered in the name of a person, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person;
- (b) A right registered against immovable property in the name of a person, excluding a mortgage bond registered against the property;
- (c) A land tenure right registered in the name of a person or granted to a person in terms of legislation; or
- (d) Public service infrastructure;

**“Responsive Bid”:** means a bid which conforms to all the terms, conditions and specifications contained in the Bid documentation without material deviation or qualification;

**“SCM Policy”:** means Rustenburg Local Municipality’s Supply Chain Management Policy

**“SCM Unit”:** means the Supply Chain Management Unit which is under the management and control of the Chief Financial Officer, and that is responsible for the implementation and management of Supply Chain Management Policy;

**“Social benefit”:** is defined as services provided by registered welfare, charitable, non- profit and religious organizations.

**“Spatial Development Framework (SDF)”:** means the SDF of the Municipality in terms of Section 26 (e) of the Municipal System Act ( Act 32 of 2000)

**“Supply Chain Management Policy”:** means the Supply Chain Management Policy of the Municipality;

## **2. POWERS OF COUNCIL**

2.1 Sections 14 read with 90 of the Local Government: Municipal Finance Management Act No 56 of 2003 (“the MFMA”) provide that the Municipality may not dispose of any of its capital assets needed to provide a minimum level of basic municipal services, unless in a meeting open to the public, has decided on reasonable grounds that the asset is not needed to provide such minimum level of basic municipal services. The fair market value of the asset and the economic and community value to be received in exchange for the asset must be considered. The transfer of ownership must be fair, equitable, transparent, competitive, and consistent with the Municipality Supply Chain Management Policy.

2.2 Apparent from above provisions is that:

2.2.1 Council is permitted to reserve and manage immovable property in its own ownership for municipal purposes aligned with its strategic objectives and to use, enhance and improve such immovable property enclosed and cultivated.

2.2.2 Council may reserve and manage immovable property in its ownership for its purposes and operational needs.

2.2.3 The Council may acquire immovable property and rights in property by ways of private treaty, cession, donation and expropriation to support its strategic objectives.

2.2.4 Council may alienate immovable property and rights in property in its ownership by way of direct sale, public tender, auction and donation.

2.3 Council may let immovable property in its ownership on a long term or short term basis by way of direct negotiation or public tender.

2.4 Council may only alienate immovable property or rights in immovable property once it is satisfied that such property or right is not required to provide the minimum level of basic municipal services and once it has considered the fair market value thereof as well as the economic and community value to be received pursuant to such disposal.

- 2.5 Before alienating immovable property, Council must be satisfied that alienation is the appropriate methodology and that reasonable economic and social return cannot be derived whilst ownership of the immovable property is retained by Council.
- 2.6 All processes for the disposal of immovable property must be considered in accordance with this policy framework as set out below.
- 2.7 In addition to the above, any disposal should take into account that the municipality has a core responsibility to acquire and avail land and buildings, in the first instance, for its own use for purposes developing and maintaining municipal infrastructure, promoting service delivery and for facilitating social and economic development and spatial integration. Land assets unrelated to these responsibilities are, by implication, surplus to the municipality's requirements although future requirements must be acknowledged and hence the need to hold immovable property in reserves.
- 2.8 Thus, the surplus immovable property may be dealt with by the municipality in a manner that it deems fit, which is either to lease it out or to dispose of it completely. In all transactions that the municipality enters into, there should be maximum benefit to the municipality, its operational requirements and the broader community.

### **3. OBJECTIVES**

- 3.1 The objectives of this policy are as follows:
- 3.1.1 The use of Council's immovable property to promote social integration, to redress existing spatial inequalities, to build strong, integrated and dignified communities and to provide access to housing, services, amenities, transport and opportunities for employment.
  - 3.1.2 The promotion of access by black people to the social and economic benefit of immovable property ownership, management, development and use.
  - 3.1.3 The management of Council's immovable property as a sustainable resource, where possible, by leveraging environmental, social and economic returns on such immovable property while Council retains in ownership thereof.
- 3.2 The main legal instruments that should be recognized, inter alia, in the implementation of this policy includes:

- 3.2.1 The Municipal Finance Management Act especially section 14 that regulates the disposal of Capital Assets or other transfer of a municipality's interest in immovable property and the process for procurement.
- 3.2.2 Municipal Systems Act and Municipal Property Rates Act that regulates the payment of rates and taxes prior to any disposal of properties.
- 3.2.3 The achievement of the goals and objectives of the National Housing Act read with the Housing Code;
- 3.2.4 The Supply Chain Management Regulations issued by the National Treasury;
- 3.2.5 The Constitution of the Republic of South Africa; and
- 3.2.6 Any other applicable legislation.

#### **4. LEGISLATIVE FRAMEWORK**

- 4.1 Alienation of Land Act (Act No. 68 of 1981)
- 4.2 Broad Based Black Economic Empowerment Act (Act No. 53 of 2003);
- 4.3 Development Facilitation Act (Act No. 67 of 1995);
- 4.4 Extension of Security of Tenure Act (Act No. 62 of 1997)
- 4.5 Land Use Management Bill;
- 4.6 Local Government: Municipal Finance Management Act (Act No. 56 of 2003) and its regulation no. 31346 of 22 August 2008, the Municipal Asset Transfer Regulations;
- 4.7 Municipal Supply Chain Management Policy Regulations (Act No. No. 27636);
- 4.8 Property Rates Act (Act No. 6 of 2004);
- 4.9 The Constitution of the Republic of South Africa (Act. No. 108 of 1996);
- 4.10 the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA)

#### **5. POLICY PRINCIPLES**

5.1 The Municipality has formulated this Policy to regulate its use of land and other immovable property in a manner that seeks to redress historical socio-economic imbalances. Numerous spatial disparities coupled with the historical economic disparities call for a conscious effort to be reversed. Thus, issues of spatial integration and empowerment of the previously disadvantaged individuals, form a cornerstone of this policy. The municipality is required to achieve its strategic objectives which include to develop and sustain a spatial, natural and built environment and drive a vibrant diversified economic growth and job creation

5.2 In accordance with its constitutional imperatives and obligations, the Municipality is

required, inter alia, to ensure it acts on behalf the public good and for the best interests of its citizens. In so doing, the Municipality shall uphold principles of fairness and transparency.

5.3 Although the municipality operates within an open market system, where land disposal, acquisition and development schemes are market driven, the Municipality shall uphold the public good and make trade-offs as and when the need arises. It is important to note that most of the times the market forces dictate transactions of alienation of land.

## **CHAPTER 2: ALIENATION OF LAND**

Alienation of land can be through means of an outright sale or a lease. Council may only alienate immovable property or rights in immovable property once it is satisfied that such property or right is not required to provide the minimum level of basic municipal services and once it has considered the fair market value thereof as well as the economic and community value to be received pursuant to such disposal.

### **6.CATEGORIES OF MUNICIPAL PROPERTIES**

The municipality's immovable assets are categorized as follows:

- 6.1.1 Residential land
- 6.1.2 Commercial and industrial land;
- 6.1.3 Social sites (such as places of worship, Crèches and other institutions); and
- 6.1.4 Sports sites.
- 6.1.5 Municipal buildings

6.2 As stated above, only those properties which are not required to provide basic municipal services are the subject matter of this policy. In the event however that the properties are reserves, the lease provisions apply.

6.3 For the purpose of this policy, viable immovable property is deemed to be property that can be developed and function as a separate entity and can be registered as a separate entity by the Registrar of Deeds; and

6.4 Non-viable immovable property is property that owing to urban planning, physical constraints or extent cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner's property.

6.5 Unless otherwise provided for in this policy, the alienation of viable immovable property shall be effected by means of a process of competitive bidding process.

## **7. METHODS OF ALIENATION**

Council may alienate immovable property and rights in property in its ownership by way of:

- Public Competition (Tender)
- Auction
- Direct Sale
- Donation

## **8. CONDITIONS OF SALE**

The following general conditions shall be applicable in the event where immovable property is sold / alienated:

8.1 All costs pertaining to a transaction shall be borne by an applicant, e.g. survey, re-zoning, sub-division, consolidations, advertisements, relocation or provision of services, except in cases where Council initiates the transaction for its own benefit;

8.2 Compliance with all statutory requirements shall apply to an applicant who shall be responsible to meet such statutory requirements;

8.3 Where applicable, existing services shall be secured by means of the registration of servitude in favour of Council and costs shall be for the account of the applicant;

8.4 Where applicable and possible, a portion of immovable property which is sold to an adjacent owner such portion shall be re-zoned, closed and consolidated with the applicant's property;

8.5 Where a specific erf is re-zoned/sub-divided to adapt to the requirements of the applicant, such sale shall not be below market value and Bulk Infrastructure Contribution Levy, where applicable, shall be payable;

8.6 When immovable property is sold, development must commence within two (2) year from the date of transfer, or possession taken, or in accordance with the provisions of the deed of sale or the development programme submitted by the purchaser and be completed in accordance with the provisions of the deed of sale or the development programme.

8.7 A suspensive condition must be included in the sale agreement to provide for forfeiture in the event that the development has not been commenced with. This

suspensive condition is particularly relevant regarding transactions where the transaction value is below market value. Furthermore, Council reserves the right to impose such conditions as deemed necessary, without limiting its rights to liquidated damages and reversionary clauses.

8.8 A reversionary clause shall be applicable to all immovable property transactions sold.

8.9 The immovable property may only be used for the purpose as approved by Council and purposes regularized by town planning schemes **and the SPLUM by-law**.

## **9. CONDITIONS OF LEASE / LETTING OF LAND**

The following general conditions shall be applicable in the event where Council's immovable property is let.

9.1 No lease application shall be processed unless an applicant has confirmed in writing that it will bear all costs where applicable, e.g. legal, survey, re-zoning, sub-division, consolidations, advertisements, relocation or provision of services, and/or a deposit as per prescribed tariff to cover incidental costs has been paid;

9.2 The under-mentioned deposits and/or adequate/equivalent security/guarantee shall be applicable to leases where the rental is based on market value:

(i) a deposit equal to 3 months rental for commercial transactions;

(ii) a deposit equal to 1 month's rental for residential and social services transactions;

(iii) no deposit in respect of garden and parking leases.

9.3 No immovable property shall be sub-let, ceded or assigned without the prior approval of Council;

9.4 An owner of fixed immovable property who leases an adjoining municipal immovable property may be substituted by his successor in title for the duration of the remainder of the lease term as deemed necessary on the same terms and conditions and/or additional terms and conditions;

9.5 Rentals shall escalate annually at a percentage as determined in the valuation report.

9.6 The lessee shall be liable for payment of rates and service charges in terms of Council's Property Rates Policy.

9.7 The letting of lanes, public open spaces, road reserves and garden extensions shall be subject to the following:

(i) closing off/securing, if required by the Council, shall be to its satisfaction;

(ii) costs for the relocation or installation of services shall be for the account of the lessee'; and

(iii) securing of servitudes.

9.8 Lessee's shall indemnify Council against any possible claims arising from the lease or use of the immovable property;

9.9 Where land is leased, development must commence within (2) years from the date of occupation or in accordance with the provisions of the lease agreement or the development programme submitted by the lessee and be complete in accordance with the provisions of the lease agreement or the development programme. A suspensive condition must be included in the lease agreement to provide for forfeiture in the event that the development has not been commenced with. Council furthermore reserves the rights to impose such conditions as deemed necessary, without limiting its rights to liquidated damages and reversionary clauses.

9.10 The property may only be used for the purpose for which it was let and purposes regularized by town planning schemes/zoning regulation;

9.11 Once an applicant has met all requirements the lease agreement shall be finalized and concluded within 2 months from date of Council's official request. Failure to comply within 2 months from date of request the awarding shall be regarded as null and void and applicant shall forfeit his/her deposit and be held liable for costs exceeding the deposit amount;

9.12 Officials from Council shall at all reasonable times be entitled to enter/inspect the immovable property; and

9.13 All agreements shall contain a clause that improvements which Council requires revert, free of charge, to Council once the lease period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled.

### **Leases Not Exceeding 12 Months**

The letting of immovable property for periods not exceeding twelve months without an option to renew:

8.2.1 Where applicable general conditions, shall apply:

Immovable property let for short term periods, i.e. 14 days for circuses, church or cultural events, concerts etc, shall be subject to the following:

(a) where applicable, applicant to provide or arrange with Council at its (applicant's) cost for services, i.e. refuse, water, electricity, ablution facilities;

(b) applicant shall return immovable property in its original condition;

(c) rental as per prescribed tariff;

(d) applicant shall indemnify Council against any claims against Council; and

(e) applicant shall undertake in writing to compensate Council for any damages caused to Council property which may arise from any circumstances whatsoever.

## **10. PROJECTIONS, PROJECTING STRUCTURES AND ENCROACHMENTS**

Council may, subject to such conditions as it may deem fit, include the payment of a prescribed rental:

10.1 Allow the erection or retention of a veranda, balcony, sign, sign-board or similar structure, device or contrivance which projects or extends into or over any public place or public street (hereinafter referred to as a "projection"); provided that:

(i) Erection or retention of such a projection shall not be permitted on the level of more than one floor; and

(ii) No such projection shall exceed the town planning scheme/zoning regulations applicable to the appropriate zoning.

10.2 When municipal immovable property under the control or management of Council is encroached upon, Council may take steps as may, in the opinion of the Council, be necessary to remove or regularize such encroachment.

## **11. OUT-OF-HAND SALE AND LETTING**

11.1 Any out of sale or letting of municipal immovable assets is subject to Council's Supply Chain Management Policy.

11.2 Where any immovable property is offered for sale or lease by public competition, any remaining immovable property may be sold or leased out of hand by Council at the upset price or higher, as long as it is satisfied that market prices are stable.

11.3 The upset price must be determined by the Municipal Valuer that should certify that it corresponds with a reasonable market value and must include the recoverable development cost such as municipal services, advertising and survey costs. The position must be reviewed by Council at least every two years.

11.4 Whenever a change in market prices is evident, any remaining erven must again be offered by public competition. A condition which applies is that not more than one erf may be sold out of hand to any single purchaser where the demand for erven exceeds the number of erven available for sale.

11.5 Where Council has at its disposal a number of similar residential erven which are earmarked for low income beneficiaries, Council:

(i) Must allocate such properties in terms of its housing policy and according to a relevant waiting list;

(ii) In the event that sub-paragraph (i) above does not apply due to a lack of an agreed and accredited waiting list or other beneficiary identification mechanism etc., then Council may dispose of such property by way of public competition;

(iii) In the event properties earmarked for low income beneficiaries are disposed through a public process, erven must firstly be offered for sale to prospective buyers who are first on a waiting list.

(iv) If any of these erven remains unsold or if a waiting list does not exist, the availability of the erven must be advertised and they must be offered to buyers on a first-come first served basis and thereafter in the order in which applications are received. A uniform selling price must be determined for these that may be lower than market value, but

(v) May not be lower than cost price, including development costs, taking in consideration any applicable housing subsidy.

11.6. Immovable properties may be sold/let on a first-refusal basis to existing tenants who have leased such premises for five years or longer on condition that the immovable property is sold at market value.

11.7 Immovable property may be sold/let out of hand in exceptional cases where Council is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community and Council, and where none of the conditions as set out in this policy provides for such exception, is permitted. Such sales or leases may be out of hand only where no objections against such sales or leases were received, and where they are not in conflict with any provision of the Supply Chain Management Policy. In such cases Council is required to record in the minutes of the Council meeting concerned stating their full reasons for preferring such out-of-hand sales or leases to those by public competition. If, however, an objection is received, the proposed sale or lease shall be by means of public competition.

11.8 Any sales and leases of immovable property may not be in conflict with any other relevant legal requirements such as town planning requirements or conditions of title.

11.9 The proceeds of the sale of immovable property must be paid into a fund approved by Council. If expenditure has been incurred in connection with the servicing of erven, i.e. the construction of streets and the provision of storm water drainage, water, electricity and sewerage and such expenditure is included in the selling price of the land, it may be regarded as recoverable, and only the proceeds of the sale of the land need be paid into the such fund.

11.10 Odd parcels of land which can be of no practical use to any other person may be sold or let out of hand to any applicant.

11.11 Immovable property acquired by a Council for public purposes or in the public's interest, may be let out of hand to any applicant for temporary use until such time as the property is required for development.

11.12. The following principles apply for informal settlement upgrading

11.12.1 Land will be sold at the market value when upgrading informal settlements under the following conditions:

- beneficiaries who do not qualify for government subsidy;
- where permanent structures are erected;

11.12.2 The average stand size will be 160m<sup>2</sup>;

## **12. SALE/LET OF LAND TO SOCIAL CARE USERS**

12.1 Immovable property may be sold/ let out of hand to social care users, except where the market value is paid, the sale of immovable property to such organizations must be subject to a suitable reversionary clause.

12.2 The selling price or lease tariff for the out-of-hand sale or lease of immovable property to social care uses shall be 30% of market value.

12.3 Immovable property may be sold/ let out of hand to other spheres of government and other local authorities. All such immovable property transactions must be considered on a market value basis, except in cases where immovable property is acquired for the development of a low income township by means of a housing subsidy mechanism and such township is again later to be transferred to Council.

## **13. PROMOTION OF ECONOMIC DEVELOPMENT IN PREVIOUSLY DISADVANTAGED AREAS**

13.1 In terms of Council's economic development and opportunity creation obligation to make business premises situated in specific previously disadvantaged areas accessible, this policy

approach necessitates that the sale and determination of selling prices of these premises be treated as exceptional cases.

13.2 In making business premises available in formerly disadvantaged areas selling prices shall be determined as follows:

- Cost of land;
- Plus market value of improvements determined by a registered Valuer on the basis of replacement cost minus depreciation.
- Depreciation to be determined at 10% for every 10 years, subject to a maximum depreciation of 70%.

### **13.3 Method of sale:**

- Public tender, subject thereto that the premises have first been offered to such lessee or tenant at the highest tender price, or such lower price as the Council may approve, and such lessee or tenant has declined to accept such offer.

- Out of hand sale to an existing tenant who has leased such premises for five years or longer on condition that the immovable property is sold at the selling price determined above and

- **Out of hand Sale/lease to Small businesses and Co-operatives for the implementation of Council approved Local Economic Development Projects;**

### **13.4 Special conditions:**

- Where the legal tenant is not prepared or in a position to purchase the business premises, Council shall upon expiry or termination of such lease agreement, enter into a new agreement with such tenant at a market related rental and/or Council shall exercise its rights to sell the premises by means of public tender.

- Before transfer is registered or a lease entered into at a market related rental, all outstanding charges/rates, water and electricity must be settled in full by the purchaser or lessee.

## **CHAPTER 3: LAND ACQUISITION, ACQUISITION OF RIGHTS IN IMMOVABLE PROPERTY AND EXPROPRIATION**

### **14. POWERS OF COUNCIL**

Council may acquire Immovable Property and rights in Immovable property within or outside its municipal area by purchase, expropriation, exchange, donation, gift, lease or otherwise, subject to compliance with the procedures set out in this policy;

Council may expropriate immovable property in terms of the Expropriation Act (Act 63 of 1975), or any other applicable legislation where necessary; expropriation shall only be for public purposes or for the interest of public;

## 15. PRINCIPLES

15.1 Council must ensure that decisions to acquire Immovable Property (land, property, buildings and land improvements) are based on sound business and planning principles which are in line with and compliant with:

- (a) Priorities and initiatives of Council;
- (b) Corporate and service plans;
- (c) Planning policies
- (d) Regional plans and area planning schemes

15.2 The Directorate should undertake the acquisition in conjunction with Technical Infrastructure Services of immovable land and servitudes (rights in immovable land) for municipal services;

15.3 The municipality will purchase the immovable property or servitude at the market value of the immovable property or servitude as determined by a municipal valuer or at a lesser price as agreed to by the seller;

15.4 In the case of expropriation, the compensation payable for the immovable property or servitude shall be determined in line with the legislation in terms of which the immovable property or servitude is expropriated;

## 16. CRITERIA FOR ACQUISITION

### 16.1 Assessment

An assessment needs to be undertaken prior to the acquisition of the immovable property; this is to ensure that:

- (a) The acquisition of the proposed acquisition will meet service delivery needs;
- (b) Consideration of the broader objectives of government;
- (c) That the expenditure of public funds is justified;
- (d) That the acquisition is in line with the SDF

The following issues should also be considered;

- (a) The reason why the preferred site or area best meets the Municipality's requirements
- (b) Source of funding and value for money
- (c) Alternative service delivery options
- (d) Sharing of government resources e.g co-location
- (e) Method of acquisition;
- (f) Valuation of the property
- (g) Consultation with stakeholders
- (h) Availability of surplus government property
- (i) Risk associated with proposed transaction
- (j) Site constraints e.g cultural and heritage issues and servitudes

## 16.2 Suitability of the Immovable Asset

The immovable asset to be acquired must be suitable for the intended use.

### (a) Human Settlement

A feasibility study has to be undertaken with key focus on:

- i) Basic Geotechnical Assessment
- ii) Basic Environmental Assessment
- iii) Technical Yield Assessment (Concept Layout)
- iv) Infrastructure Status Quo Assessment

### (b) Acquisition for services

The following should be considered:

- i) Potential to meet future demand
- ii) Financial benefits
- iii) Municipal priorities
- iv) Other future service requirements in proximity to the site

## 16.3 Valuations

valuations are required in the acquisition process and the immovable asset can only be acquired at the current market valuation as determined by a qualified market valuer.

## 17.METHODS OF ACQUIRING IMMOVABLE PROPERTY

The Municipality may acquire land by:

### 17.1 Open Market

The municipality may acquire Immovable Property through the open market place by either public auction or sale.

### 17.2 Private treaty agreement

Private treaty contracts are suitable where the property has clear title or where clear title is reasonably achievable and the owner is willing to negotiate on reasonable terms.

### 17.3 Expropriation

This method should only be used when the Municipality has not been successful in concluding an agreement with the owner and it can be shown that the immovable property is required.

## 18. MANDATORY CONSULTATION

18.1 Council shall not acquire Immovable Property unless it has:

- (a) Advertised its intention to acquire such immovable property; and
- (b) Considered that the objections (if any) lodged in accordance with the advertisement contemplated in sub clause (a)
- (c) The notice stipulated in (a) above should include but not limited to:

- (i) The property description including the extent
- (ii) The contracting parties
- (iii) The purchase price of the property;
- (iv) Market value of the property;
- (v) Funding of the acquisition;

18.2 If it is reasonable and justifiable, the Municipal Manager can deviate from 1(a) but the following relevant factors must be taken into account, including:

- (a) The objects of the proposed transactions;
- (b) The nature and purpose of, and the need to be take the decision;
- (c) The urgency of taking the action or urgency of the matter;
- (d) The need to promote an efficient administration and good governance.

## 19. APPROVAL PROCESS

- a. Following the advertisement contemplated above, the Property Management Department shall compile an agenda item, motivating the acquisition of the Immovable Property (s) or rights in Immovable Property(s). The report should indicate which methods of acquisition was/will be used and why this specific method has been decided on.
- b. The report must be considered by the person/committee who has the delegated authority to consider such application.

## CHAPTER 5: DISPOSAL OF RIGHTS IN IMMOVABLE ASSETS

20. (a) A servitude is defined as a right which one person has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable asset.
- (b) As servitudes result in a burden on the immovable asset for extensive periods of time, sometimes permanently, servitudes may only be granted after careful assessment of the impact of the proposed servitude on the immovable asset.
- (c) If the proposed servitude will result in the immovable asset being negatively affected, including the impairment of the ability to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude may not be granted.
- (d) Servitudes may be granted to any private person or organ of state, upon payment of the appropriate market related compensation, provided that where another organ of state requires a servitude for the benefit of the general public and subject to the necessary authority having been obtained, the payment to the granting of the servitude, may be waived.
- (e) The party requiring the servitude, is responsible for all costs relating to the granting and registration of the servitude.

## **REVIEW PROCESS**

This Policy is subject to annual review, unless the Council deems necessary to revisit specific sections of the policy at any given time.

DRAFT

## **ANNEXURE 1:**

### **PROCEDURES & PROCESSES FOR VARIOUS FORMS OF LAND DISPOSAL**

#### **1. Privatisation of public roads and access control on public roads:**

Principles and guidelines: the following principles/guidelines shall apply:

1.1 There must be an agreement from a two-thirds of affected land owners (or properly authorised representatives) abutting the public road for which closure and/or control is applied;

1.2 Council may approve a special rating district on the affected properties to ensure provision of proper maintenance of public infrastructure with the affected area;

1.3 There must be support for such closure from the relevant ward committee and ward councillor of the ward in which the application is situated. Such support will not imply automatic approval of such application.

1.4 The functional heads of Directorate: Infrastructure Development, Directorate: Planning & Human Settlement and Directorate: Public Safety must both be satisfied that the proposal will not adversely affect the public road reserve network in the area so as to:

- (a) prevent or impede cost effective urban development in the future;
- (b) may cause "rat-runs" or other unsatisfactory and inappropriate road uses to develop;
- (c) preclude convenient pedestrian and vehicular access to public places or other public amenities in the area;
- (d) deny sufficient and practical vehicular and pedestrian access to any member of the public to residential areas within the municipal area;
- (e) and the Provincial Road Authority shall be consulted if any Provincial Roads may be affected

1.5 The entire road reserve abutting the above affected land owners will be closed in terms of the applicable legislation, and not merely a narrow strip thereof.

1.6 Such closed road shall be leased to a juristic body comprising all of the affected land owners. at a market related rental for a period of not less than 10 years, with a proviso that the lease may be cancelled on three months written notice if the leased area is required for any municipal, state or public purpose, in which event no compensation will be payable for any improvements as may have been affected.

1.7 The road closure and intention to lease shall be advertised for broader public comment in terms of the applicable legislation.

1.8 The above-mentioned juristic body shall take responsibility for full maintenance of the road and the storm water system within the closed road reserve to the satisfaction of the functional Head: Technical Services. The terms of the above lease shall provide that in event of breach of same, Council may effect such repairs as are necessary at the expense of the juristic body, or alternatively cancel the lease and cause any boom control mechanisms, gates or walls on the lease area to be removed at the expense of the juristic body with no compensation payable, and declare the road a public road once again.

1.9 The lease shall provide that 24 hour access by municipal, Telkom and electricity officials to all municipal, Telkom and electrical services and installations for inspection, repair, maintenance and improvement shall be ensured, and that the Council will be indemnified from all claims for any damage as may occur within the leased area while such inspection, repair, maintenance or improvement is being effected.

## **2. Erection of walls, fences or barriers on Municipal land, public open space or access control mechanisms in a road reserve:**

The following principles/guidelines shall apply:

2.1 Walls, fences or barriers on Municipal land, public open space or access control mechanisms in a road reserve may be erected on Council land entirely at Council's discretion and at applicant's cost and risk, and with the proviso that such walls or fences may be removed at Council's pleasure on notice of one month with no compensation payable to the applicant.

2.2 Application to erect such walls, fences or barriers on Municipal land, public open space or access control mechanisms in a road reserve shall be made in writing to Councils Property Management Services unit (Unit: Estate Administration & Land Sales) by the registered land owner/s (not tenant) of immovable property situated in the vicinity of the proposed wall, and the relevant ward committee. Such support will not imply automatic approval of such application.

2.3 An application to erect walls, fences or barriers on Municipal land, public open space or access control mechanisms in a road reserve shall be accompanied by:

- (a) A non-refundable application fee as determined by Council from time to time;
- (b) A plan to scale showing clearly the location and extent of the proposed wall or fence;
- (c) Details of the nature, style and height above finished ground level of proposed wall or fence.

2.4 The consent to the proposed nature, style and height of the proposed wall or fence and the construction thereof from all the land owners in the vicinity of the wall, as well as of the relevant Ward Committee and ward Councilor.

2.5 A formal agreement must be entered into by the applicant (or duly authorized representative) with Council to the satisfaction of the Director: Planning and Human Settlement, wherein it is agreed:

(a) That any and all costs associated with the proposed wall or fence and of the agreement shall be to the account of the applicant;

(b) The Council is indemnified by the applicant against any and all claims which may arise out of the presence of the proposed wall or fence, its materials, nature or construction;

(c) That the continued repair and maintenance of the proposed wall or fence (including painting) will be the responsibility of the applicant, and that Council is absolved of all responsibility in this regard;

(d) That in the event of the proposed wall or fence not being maintained, repaired or painted to the satisfaction of Council, Council is authorized to take such steps as may be necessary to remedy the situation and to recover all costs in connection therewith (including legal costs) from the applicant;

(e) That in the event of installation, maintenance, repair or relocation of any municipal service which may be situated (or planned to be situated) in close proximity to the wall or fence, Council shall have the right to dismantle the wall or fence or part thereof to effect such installation, maintenance, repair, or relocation and shall not be obliged to re-instate the wall or fence.

(f) That at any time in the future, should Council adjudge it to be in its own interests or the interests of the broader community to remove the wall or fence, Council shall be entitled to do so on notice of one month, and no compensation shall be payable to the applicant;

(g) In the event that a group of land owners apply, or wish to support the financial responsibility of the wall or fence, all such land owners shall be party to the above agreement.

2.6 The functional heads of Directorate: Infrastructure Development and Directorate: Public Safety must be satisfied that the proposal will not adversely affect the public road reserve network in the area so as to:

(a) preclude convenient pedestrian and vehicular access to public places or other public amenities in the area;

(b) deny sufficient and practical vehicular and pedestrian access to any member of the public to residential areas within the municipal area;

(c) cause unsatisfactory and inappropriate road uses to develop;

(d) prevent or impede cost effective urban development in the future.

2.7 In the event that an access control mechanism goes across the public road or public place (as distinct from following cadastral boundaries thereof) the public road or public place closure and intention to lease shall be advertised for broader public comment in terms of the applicable legislation.

2.8 Such an access control mechanism may be approved and shall be of a nature and style agreed by Council's Directorate: Planning and Human Settlement in consultation with the Directorate: Public Safety;

2.9 An approval to erect an access control mechanism shall be valid for a period of twelve months only. In the event that construction of an access control mechanism is not complete within the twelve month period, Council may require that such incomplete structures be demolished by the applicant at his/her cost, failing which Council shall demolish any mechanism and recover the costs (plus legal costs) from the applicant.

### **3. Procedures for Letting or Closure of Public Passage lanes**

3.1 Applications to close public passages for public safety reasons must be supported, in writing, by the relevant ward councilor and ward committee and to identify an adjoining or nearby landowner(s) who will take charge of that land.

3.2 Subject to there being no technical objection from relevant service units to forthwith (pending formal closure):

(a) temporarily close the public passage/lane in terms of applicable legislation;

(b) permit the identified adjoining owner(s) to occupy, enclose, or cultivate such closed public passage/lane subject to:

(i) the signing of a lease agreement stipulating a lease period of 5 years with an option of renewal for the same initial period or as mutually agreed upon provided that such renewal period shall not exceed the initial lease period;

(ii) indemnifying Council from risks;

(iii) allowing free and unhindered access to Council services as may exist in or under the public passage/lane; and

(iv) the payment of the prescribed standard lease rental.

3.3 Serve written notice advertising the authorized lease onto the temporarily closed public passage on all other adjoining land owners.

3.4 Publish a notice in the press as required by legislation and policy of advertising Council's intention.

3.5 To close identified public passages for public safety reasons.

3.6 To permit such closed public passages to be occupied, enclosed, or cultivated by adjoining owners on signing of a standard renewable lease with standard rental as published in Council's tariffs from time to time; and

3.7 Calling for objections to same.

The standard rental for portions of public passages closed for public safety reasons be reviewed annually with the rest of the Council's tariffs and charges.

DRAFT

## **Annexure 2:**

### **General principles and guidelines pertaining to Municipal Property**

#### **1. Municipal Properties and Property Surplus to Council's requirements**

##### **1.1 Principle:**

1.1.1 Improved properties surplus to Council's requirements shall be sold. If the property is not capable of being sold it shall be leased at a market-related rental.

##### **1.2 Application**

1.2.1 A market-related rental shall be calculated based on comparable analysis.

1.2.2 In securing a tenant the services of a property broker may be used if considered appropriate - lease period to be at least twelve months. Commission shall not be payable direct to the broker but the first month's rent can be paid in lieu of letting commission to the broker.

1.2.3 The rental to be adjusted to allow for the separate billing of rates e.g. market-related rental R3 000 p.m, rates R500 p.m. Rental to be R2 500 p.m. excluding rates which will be separately billed and to be for the Lessee's account.

1.2.4 All prospective Lessee's must have clear credit backgrounds and shall be subject to a credit check.

1.2.5 Members of staff may be housed in available accommodation subject to them meeting the same criteria as the public - clean credit record rental, paid is market related and the Council has satisfied itself that the prospective tenant can afford to pay the rental.

#### **2. Acquisition and disposal of rights in property**

##### **2.1 Application:**

2.1.1 Compensation for all rights to be acquired or disposed of in property shall be calculated on a market-related basis.

2.1.2 The amount of compensation charged/received should reflect that a right is being registered over the property as opposed to full ownership of the property being acquired.

2.1.3 The amount of compensation involved should be based on how severely the property is encumbered.

#### **3. Advertising**

3.1 The alienation or lease of property or rights in property shall be subject to the transaction being advertised in the press for objections in three official municipal languages.

3.2 Adverts are to contain all material information relevant to a transaction which should include:

(a) Identity of the contracting parties;

(b) Description of the property to be sold - title description, street address if applicable and extent;

(c) The purchase price or rental; and

(d) Copy of all advert to be served on abutting owners, Ward Councilors and Ward Committee.

#### **4. Cost of Deviating Services**

4.1 As a general principle the deviation of services from viable portions of land to be sold is to be attended to and paid for by Council prior to sale and the expenditure recovered as a cost of preparing the land for sale.

4.2 The cost of deviating services from non-viable portions of land to be sold or leased out-of-hand is to be determined before negotiations commence and must be taken cognizance of when the purchase price or rental is determined. The purchase price or rental should be adjusted to reflect the cost of deviating the service but the whole cost should not automatically be deducted especially where the cost is more than the land is worth.

#### **5. Credit Checks**

5.1 Before any application to lease or purchase Council land is processed a check must be carried out to ensure that the applicants' Rates and Service Accounts (water and electricity) are currently up to date.

5.2 In the event of there being arrears these are to be settled before the application is processed.

5.3 Application forms to be amended to provide for this information to be endorsed on the form by the official processing the application.

5.4 Valuation related information is to be included in Reports submitted for approval to the relevant Executive Authority.

## **6. Property Sales**

### **6.1 Principle:**

6.1.1 Alienation of viable land shall be by public competition (public auction/tender) except where exceptional circumstances exist.

### **6.2 Application:**

6.2.1 No land shall be offered for sale unless it is appropriately zoned and capable of transfer (registerable land unit).

6.2.2 As a general rule a Valuer need not be appointed to prepare a motivated valuation report to determine a reserve price. If an indication of value is needed this should be done using in-house Valuer. If such expertise is not available the municipal Valuer (Manager Valuation) shall arrange, on request, for a valuation to be undertaken.

6.2.3 A development clause requiring improvements of a certain size and value to be erected within 2 years of date of sale to be included in the Deed of Sale.

6.2.4 Liquidated damages to be payable after the expiry of the 2 year period if suitable improvements are not erected.

6.2.5 Transfer to be registered within 3 months of signing of the Deed of Sale or penalty interest at the Prime Overdraft Rate should be charged.

6.2.6 A non-refundable deposit of 10 % to be paid on signing of Deed of Sale.

6.2.7 The Deed of Sale may be amended to provide for the deposit to be refundable where low cost single dwelling erven are sold. The deciding factor to be whether the area falls within a zone of poverty and the economic development of the area is a priority.

## **7. Sale of Viable Land to the State**

### **7.1 Principle:**

7.1.1 The out-of-hand sale of land to the State, Provincial Administrations and other organs of State is permitted provided that such land is sold at full market-value.

### **7.2 Application:**

7.2.1 The market value to be determined in accordance with acceptable and established valuation practice. All such sales will be advertised in the press.

## **8. Sale of Viable Property to Social Care Organizations**

### **8.1 Principle:**

8.1.1 The Municipality has a social responsibility to assist organizations providing social care through, inter alia, facilitating access to premises for such services at subsidized/discounted rates

### **8.2 Application:**

8.2.1 The out-of-hand sale of immovable property to Social Care Organizations is permitted, but lease agreements should be encouraged.

8.2.2 The price payable shall be fixed at between 10 % and 25 % of market-value subject to a reversionary clause being registered against the title of the property.

8.2.3 The market value of the property shall be based on the most likely alternative use to which the property will be put. In the event of it being considered unlikely that an alternative usage exists for the property the value of the property shall be based on a single Dwelling usage being lowest common alternative use.

8.2.4 The price shall be fixed between 10 % and 25 % of the market value with 10 % payable in poor communities where there is little infrastructure and 25 % payable in the more affluent communities.

8.2.5 The 10 % in less affluent areas represents a Social Development discount, targeting zones of poverty for upliftment.

8.2.6 The Valuer to use his/her discretion in this regard. The reversionary clause registered against the title is to record what percentage of market value is paid to permit the calculation of compensation payable to the City should the Purchaser wish to have the clause expunged some time in the future.

### **Examples:**

(a) If 10 % of market value is paid now and in 5 years time application is made to have the clause lifted, the Purchaser will have to pay 90 % of the market value of the property at the date the application is made. If vacant land was sold vacant land should be valued and not improvements made at the Purchaser's expense.

(b) A development clause requiring improvements of a certain size and value to be erected within a 2 year period from date of sale to be included in the title of property. If the property is not developed within that period the property shall revert to the title of the Council.

## 9. Rapid Land Release Programme

Preamble:

The programme plans for the municipality's intended Program of residential, mixed use, community land releases with particular emphasis on the previously disadvantaged communities, within a well-planned environment. The programme is indicative and subject to change as forecast population changes, demand for land and the capacity to cost effectively deliver key infrastructure and services.

The programme seeks to assist effective communication of the municipality's intentions or actions thereby avoiding the pitfalls of desperate people who would be vulnerable to exploitation and encourage people to be wary of land grabbers.

Through the land release strategy, legitimate beneficiaries would be able to get legal access to the property through transfer. The programme seeks to verify and quantify the total number of properties owned by the municipality. The process would provide economic incentives to invest in strategic parcels of land and thereby identifying specific precincts that stimulate economic and social development.

By transferring the properties, and simultaneously compiling a verifiable and more accurate asset register, the land release will be an important source of revenue (will secure an increased Rates base), contributing to financial, social and environmental objectives by seeking to:

1. Facilitate housing diversity through different typologies and the provision of affordable housing choices;
2. Meet the demand for land by allowing "mixed land use proposals" and stimulate economic activity in the residential sector;
3. Establish appropriate inventory of serviced/ developable land;
4. Achieve satisfactory returns, e.g. rates and taxes from the potential sale of such land;
5. Assist in curbing potential land invasions in municipal owned and privately owned land.

### Conditions on allocations

The beneficiaries should ideally be:

1. First time homeowners;
2. Never benefitted from the National Housing Subsidy Scheme;
3. Preferably fall within the "Gap" market; thus being able to pay for services;
4. Upon registration, the beneficiary:-
  - 4.1 Cannot transfer/sell the erf to another;
  - 4.2 Cannot use the property for business activities, including renting out the property;

- 4.3 Must erect a temporary structure (approved by Building Regulations) within a month (30 days);
- 4.4 Must develop a permanent structure (approved by Building Regulations) within a year of transfer;
- 4.5 Payment of transfer costs will be for the beneficiary's account.

A certain portion (40 %) of the total number of stands to be allocated would target:

1. Indigents;
2. Child-headed families;
3. People living with disabilities; and
4. Women headed families.

## **10. Sale of Non-viable land**

### **10.1 Principle:**

10.1.1 The sale of non-viable land is permitted, even though a competitive tender process may not be an appropriate release mechanism.

### **10.2 Application:**

10.2.1 The out-of-hand sale of non-viable closed streets, lanes, Public Open Spaces and portions of surplus Council land to adjoining owners is permitted.

10.2.2 Letters of no objection from adjacent property owners to be submitted with application.

10.2.3 The land shall be sold at market value. In determining the market value cognizance shall be taken of the utility of land (what benefits it offers to the Purchaser). The portion of land should as a general rule be valued on the before and after method or such other method considered appropriate under the circumstances. Specific attention should be given to additional development rights achieved as a result of acquiring the land in question.

10.2.4 Copy of advertisement to be served on the abutting owners. Prior occupation of the land may be granted subject to:

- (a) The land being legally closed if necessary;
- (b) The Deed of Sale being signed;
- (c) An Indemnity being completed;
- (d) The purchase price paid in full.

10.2.5 Plan(s) for the improvement upon land to be passed by Council prior to commencement of the work.

10.2.6 If transfer is not registered within 12 months from the close of advertisement calling for objections; interest at the prime overdraft rate shall be payable. Alternatively, before the expiry of the month period referred to above the purchase price may be lodged with the Council prior to transfer or deposited in the Conveyancer's Trust Account with interest accruing to Council.

10.2.7 In the event of transfer being delayed as a result of the Council's actions, the interest may, subject to written approval from the Municipal Manager, be waived for a period not exceeding three months - total period with interest not being charged is therefore fifteen months from closing of the advertisement calling for objections.

## **11. Property acquisition**

### **11.1 Principle:**

11.1.1 Property shall only be acquired for approved Municipal Schemes where funds are available on the budget in the current financial year.

### **11.2 Application:**

11.2.1 The acquisition of property by expropriation should not be a preferred option as expropriation carries a stigma.

11.2.2 When permission is obtained from the relevant authority to acquire property the authority should include the right to expropriate as a last resort in the event of either negotiations having failed or not being practical for a reason like time constraints.

11.2.3 Compensation paid for property expropriated should be based on Section 12 of the Expropriation Act 63/1975 (as amended).

11.2.4 Compensation paid for properties acquired for road purposes by negotiation shall take cognisance of Clause 26(3) of the Expropriation Act 63 of 1975 (as amended).

## **12. Lease of land**

### **12.1 Lease of land: General Principle**

12.1.1 Immovable property surplus to the Council's requirements should be sold, if possible, and not leased. A lease should only be considered if the property is not capable of being sold or there are specific reasons why the property should not be sold.

## 12.2 Lease of Viable land

### 12.2.1 Principle:

Lease of viable property shall be by public competition and a market-related rental should be charged.

### 12.3 Application:

12.3.1 A development clause requiring improvements of a certain size and value to be erected within one year of date of sale to be included in the Agreement of Lease.

12.3.2 Rates shall be payable over and above the rental.

12.3. Rental shall be subject to a market-related escalation clause.

## 13. Lease of Viable Land to State

### 13.1 Principle:

13.1.1 Viable property should be sold and not leased. In the event of property not being capable of being sold and required by the State it may be leased out-of-hand to the State. However, the municipality should not be responsible to subsidise the holding cost of land to other spheres of government as this constitutes a perversion of the cost of service provision and revenue application.

### 13.2 Application:

13.2.1 The rental shall be market-related and subject to a market related annual escalation rate.

13.2.2 Rates shall be payable over and above the rental. The market related rental, in the absence of comparable market transactions, should be based on a market related return on the value of the land.

### Example

(a) If the State wishes to lease 1 000 m<sup>2</sup> of land zoned Business for a Police Station the market value of the land should first be determined based on the Business Zoning;

(b) If the land is valued at R500/m<sup>2</sup> and a market-related return is 10.5 %; the rental payable would equate to:

$1\ 000\ m^2 \times R500/m^2 \times 10,5\ \% / 12 = R4\ 375\ p.m.$

The rental amount shall be determined by a registered valuer

## **14 Lease of Viable Land to Social Care Organisations**

### **14.1 Principle:**

14.1.1 The out-of-hand lease of immovable property to Social Care Organizations is permitted.

### **14.2 Application:**

14.2.1 Lease is to be advertised;

14.2.2 Rates are to be levied over and above the rental;

14.2.3 Rental to be as per tariff.

## **15 Lease of Viable land to Sporting Bodies**

### **15.1 Principle:**

15.1.1 The out-of-hand lease of immovable property to sporting bodies is permitted.

### **15.2 Application:**

15.2.1 Community based non-professional sporting bodies shall be charged a tariff.

15.2.2 Professional sports bodies shall be charged a market-related rental based on the market value of the property to be leased. The market value to be determined based on the most likely alternative use for the site.

15.2.3 Rates shall be levied over and above the rent

### **Annexure 3: Steps/Procedures for Alienating Council Land**

16.1 In terms of Section 14 and 90 of the Municipal Finance Management Act, the power to alienate Council owned land is reserved for Council. Council must pass a resolution stating that the land is not needed to provide the minimum level of basic municipal services.

16.2 A qualified and registered valuer must be appointed to provide the market value to assist Council to determine the fair market value of the land and the economic and community value to be derived from the disposal.

16.3 Once Council land has been identified for disposal, the Director Planning and Human Settlement must obtain the inputs of internal departments and incorporate those inputs on the report to be submitted to the relevant committees ( Portfolio Committee on Planning and Human Settlements, Mayoral Committee) for consideration and recommendations and to Council, to grant permission to alienate in terms of Section 14 of the Municipal Finance Management Act.

16.4 Once the Council has resolved to allocate the land through any of the methods outlined in this policy, notice of the resolution of Council in terms of Section 79 (18) of the Local Government Ordinance, 1939 ( Ordinance 17 of 1939, as amended) to dispose of the Council land shall be:

- a) Displayed on all public notice boards of Council, around the land to be disposed or any conspicuous place as Council may deem necessary
- b) Published in the local newspaper

16.5 The Accounting Officer will call upon any person who wishes to object to the proposed alienation in the notice to objection against the alienation of such land within fourteen (14) days from the date of publication of the notice in the newspapers.

16.6 Where an objection is lodged, the relevant Committee established by Council in terms of Section 80 of the Municipal Structures Act 1998, (Act 17 of 1998) would call for a hearing to consider any such objection

16.7 If the above-mentioned Committee maintains any objection, the land will not be disposed of due to valid reasons given by such Committee.

16.8 Although the MFMA and the SCM Policy principles prescribe that a competitive bidding process be followed to dispose or transfer Council owned property, certain of the following categories of properties may be dealt with differently:

- (a) Residential sites: these sites will be sold on a first come- first served basis after the selling of price has been determined.
- (b) Church Sites: The purchaser will be furnished with the agreement at market value
- (c) Community facilities/parks/ undetermined open spaces within proclaimed townships
- (d) Industrial/Business sites: These sites will be alienated once the impact of the type of activity has been evaluated and the selling price linked to the market value and other aspects have been determined.

- (e) Portions of land for Economic Development: The lease/sale of land for SMMEs in line with the Municipality's local economic development plans
- (f) Transfer to organs of state: Transfers to another Municipality, Municipal entity, National or Provincial Government

16.9 In the case of Sales or long term leases, registration of the transfer or lease in the Deeds Office shall be done by an Attorney appointed by Council or from Council's panel of attorneys

DRAFT

## **Annexure 4: PROPOSAL CALL PROCESS**

### **17 Introduction**

17.1 Considerable confusion and misunderstanding has arisen with respect to the proposal call and qualified tender call processes, particularly at this time, when the disposal of municipal-owned land is seen as opportunities for promoting empowerment and economic development. The ground rules of these processes, from the preparation of the call document to the evaluation of proposals and their consideration by Standing Committees, must be clear and commonly understood.

17.1.2 Inappropriate interventions by proposers, councillors, officials, or community groups may compromise the selection process and increase the risk of litigation. In order to ensure that, in future, the disposal or lease of city land by proposal call is not jeopardised, a comprehensive and systematic process for addressing development proposal calls and qualified tender calls must be identified and adopted as municipal policy.

### **17.2 PROPOSAL CALL PROCESS**

There are a range of options that the municipality can use to dispose of land. All of these processes involve public competition, unless specifically waived' by Council.

17.2.1 **A straight auction or tender:** this is used for land that is legally prepared for development and the municipality wishes no direct involvement in the nature of the development other than the normal building plan approval within the Zoning Scheme. This involves a call for financial offers only and in such cases, price is the primary consideration.

17.2.2 **A qualified tender call:** This is used when the land is legally prepared for development in terms of the Zoning Scheme and the desired nature of the development has been defined in considerable detail and approved by the relevant Committees. In such cases, the municipality is interested in more than the financial offer and requires the submission of proposals that meet specific objectives in relation to the development e.g. empowerment and a particular development on a strategic site.

17.2.3 **A proposal call:** This is used when although Council has objectives and development guidelines in relation to the disposal or lease of a strategic site, it seeks to explore innovative proposals from the private sector. Thus, it is the combination of the financial offer and other clearly defined objectives by which public competition is to be decided upon.

Note: given the process for qualified tenders and proposal calls generally is the same, unless otherwise stated, further use of the term proposal call will include qualified tender.

### **17.3 PREPARATION OF PROPOSAL CALLS**

Once identified and approved as a project, the following should take place in order to

prepare a call for proposals:

### **17.3.1 The technical team**

17.3.1.1 An inter-departmental technical team should be established to develop the documentation required. The basic team should consist of representation from at least the following:

(a) The nature of the development;

(b) The determination of the nature of development and the preparation of development guidelines will be coordinated by the technical team. These should conform to and be directed at achieving the goals and objectives set out in the motivation for the project

### **17.3.2 The evaluation criteria**

17.3.2.1 The determination of criteria for evaluation of proposals will be coordinated by the evaluation team. On the basis of recent experience a comprehensive set of base criteria have been developed and are set-out (to be provided). These should form the basis of all proposal call criteria. Modifications and/or additions appropriate to site specific issues and the particular goals and objectives of the development will be made on a project-by-project basis. These may be modified/amended, depending on specific site and development objectives.

17.3.2.2 Evaluation criteria will be submitted to the relevant Portfolio Committee for approval, and to other affected Committees for comment and endorsement.

17.3.2.3 Weighting of the criteria will be determined by the Technical team and approved by the Municipal Manager. This will be done after submission of the proposals and prior to their evaluation. This is to ensure that the proposers make their best efforts to address all of the criteria, and do not concentrate on those that have the greatest weighting. If criteria scoring are identified too early in the process, proposers are likely to have sight of the scoring.

### **17.3.3 The Draft proposal call document**

17.3.3.1 The draft proposal call document will be submitted to Municipal Manager for approval and authority to advertise, and for information and comment to other affected committees.

## **17.4. RULES, PROCEDURES AND PROGRAMME**

The proposal call document will set out the rules, procedures and the programme (an

estimated timeline for each part of the process) for the proposal call. The clear understanding of these is essential to the smooth running of the process. Important aspects of the proposal call process are highlighted, as follows:

#### **17.4.1 Proposal call advertisement and clarification**

17.4.1.1 Explaining the proposal call objectives, development guidelines and evaluation criteria to prospective proposers is essential, in order to clarify the City's intent. Within three weeks of advertisement of the proposal call a site visit will be held at which technical details of the site and the development objectives and guidelines will be discussed with proposers. This will be followed by a briefing meeting at which the proposal call rules, submission requirements, evaluation and process and timeframes will be outlined.

17.4.1.2 A further opportunity for written questions and enquiries will then be given, up to the set date for submission of proposals. All questions and answers will be circulated to all registered proposers, in order to ensure transparency of the process. Proposers will be instructed that no contact with politicians or officials should occur outside the formal communication process outlined above. Any such contact will be construed as an attempt to influence the process and the proposer will be disqualified.

17.4.1.3 A full record of the queries answers and the presentation will be placed on file as part of the documentation of the process.

#### **17.4.2 Proposal Submission**

17.4.2.1 The date, time and place for submission of proposals will be fixed and clearly identified in the proposal call document.

17.4.2.2 No late submissions will be accepted. Late submissions will not be opened.

17.4.2.3 Proponents of late submissions will be informed accordingly and instructed to collect their documents. Submissions submitted on time will be checked for compliance with the submission requirements. Proposals that do not contain all of the necessary proposal call components will be disqualified and the relevant proponent will be informed accordingly.

#### **17.4.3 The evaluation of proposals**

17.4.3.1 The technical evaluation process will be conducted by an evaluation team, comprising senior officials from the technical team and at least one independent observer from the legal profession. The team will be convened prior to the submission date to weight the approved criteria and submit the weighting to the Municipal Manager.

17.4.3.2 A full set of the proposal documents will be distributed to each member of the

valuation team. The team will meet as often as is required, to complete a technical evaluation of the proposals in accordance with the set evaluation criteria and associated weighting. The scoring of the criteria will be by consensus. A record of the evaluation team's deliberations will be added to the formal documentation of the process for the committee's inspection.

17.4.3.3 Depending on the complexity of the proposal call, the evaluation process must involve other stages, such as the short listing of proposers for an interview with the evaluation team after initial scoring has been finalised. The purpose of this interview is for the team to obtain clarification on elements of a proposal. No changes to the proposals will be entertained at the interview.

17.4.3.4 As a result of the interview, the scoring of criteria may be increased, decreased or unaltered, depending on how the answers to set questions impact upon the Panel's initial understanding of the relevant sections of the proposal.

## **17.5 CONCLUSION**

17.5.1 The proposal/limited tender call process is an important mechanism for the disposal of -owned land to assist in the achievement of strategic and other important objectives of the City. These include access to economic empowerment opportunities (all proposal calls), integration, affordable housing, economic development, sensitive and complementary development, strengthening of existing commercial nodes.

17.5.2 The roles of participants must be clear and rigorously observed: the identification of projects and determination of method of disposal (committees and officials), the support of affected communities for the nature of development and the development guidelines, the preparation of the proposal call (technical team), the review and approval of proposal call documentation, including specific elements of the document (relevant standing committees).

17.5.3 The technical evaluation of proposals, including clarification interviews with short-listed candidates (multi-disciplinary technical team of senior officials) and the review of recommendations and award through the Council process. The Council process should ensure the thoroughness of the technical evaluation and that the award is consistent with the strategic or other objectives that the proposal call was intended to achieve.