

## IMMOVABLE PROPERTY DISPOSAL POLICY

<i>Policy Number</i>	
Policy Name	IMMOVABLE PROPERTY DISPOSAL POLICY
Policy Status	APPROVED
Date of last Approval \ Reviewable	31 May 2022
Policy review / Development	Policy to be reviewed with the Budget approval process every year
Date of next review	With the Budget approval process in May 2022
Purpose	To ensure that Msukaligwa Local Municipality manage its Immovable assets in an effective, efficient, economical and transparent manner
Aims and objectives	To provide procedures in which the Municipality may dispose of and acquire immovable property. When implementing this policy the MFMA, MATR and the Supply Chain Management Policy will be the Municipality's driving force
Policy custodian	Chief Financial Officer
Related Policies and Legislations	<ul style="list-style-type: none"> <li>• <i>The Constitution of the Republic of South Africa 1996</i></li> <li>• <i>Municipal Finance Act 2003 (Act. 56 of 2003)</i></li> <li>• <i>National Treasury Circulars</i></li> </ul>
Approving authority	Council
Applicability	To the Municipal Manager and Chief Financial Officer
Amendments to the Policy	<ul style="list-style-type: none"> <li>• <b>Page 34 Rental should be charged at 1% of the property value with minimum of R1000 or Market Related Value</b></li> </ul>
Policy Benchmark and References	<i>City of Mbombela and Mkhondo Local Municipality Treasury Regulations</i>
Stakeholders Consulted	Not applicable.
Accountability	<ul style="list-style-type: none"> <li>• The Municipal Manager is accountable for the proper implementation of this policy in terms of the <i>Municipal Finance Act 2003 (Act. 56 of 2003)</i></li> </ul>



# **IMMOVABLE PROPERTY DISPOSAL POLICY**

**1 JULY 2022 – 30 JUNE 2023**

**MSUKALIGWA**

**LOCAL MUNICIPALITY**

**(MP 302)**

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## 1 HISTORY AND BACKGROUND

The Municipality has been inundated with land applications ranging from, residential, industrial, Business, Recreational, Social, and this demonstrates the need for the municipality to make available new methods so as to curb the demand and to minimize the number of applications there is.

The Municipality did not have a referral document to guide the disposal of land and the processes to be followed, which has led to enormous land grab and illegal squatting (Informal Settlements), it was not clear which division within the Municipality may be contacted on issues of land disposal, and any other related enquiries, hence this approach is premised by the fact that there has been a huge demand from the communities of Msukaligwa, and this policy seeks to address the said imbalances and arrest these social ills.

The Policy must not seek to exclude some sections of the residents but it must prioritize those law abiding citizens who've been patiently waiting since the dawn of democracy more than 17 years to have access to housing opportunities. The Policy must include but not limited to the following:

- a) Allocate services sites to the indigenous residents from the age of 36 and above. The Municipality will be:
  - i. Providing them access to a the long awaited housing opportunities;
  - ii. Introducing new participants into the property market;
  - iii. Assisting itself in widening the income base (from rates and taxes); and
  - iv. Improving the economic status of residents.
- b) It is likely that the people who are in need are more than what the Municipality can supply. The process of allocating sites therefore will have to be very accurate, open to scrutiny and be undertaken by people that are beyond reproach. It will have to be transparent, free and fair to ensure everybody will be happy at the end of the process.

## 2 PREAMBLE

The Msukaligwa Local Municipality continuously endeavours to achieve best practice policies and procedures when managing the administration and operations of the Municipality.

The inequitable spread of ownership of property throughout the Msukaligwa Local Municipality's district and the historical causes thereof are recognised, and Council acknowledges that it has a leading role to play in addressing these imbalances by ensuring that the immovable property 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 that it serves.

The intention of this Policy is to give guidance on the alienation of Municipal-owned land and housing. The Policy is incorporating Council resolutions, streamline procedures, comply with new Municipal legislation impacting on property alienation and reduce possible delays regarding the alienation and acquisition processes with a view to achieve the following objectives:

- i. To standardise policy procedures for the alienation and acquisition of land by the Msukaligwa Local Municipality;
- ii. To fast track community integration;
- iii. To provide land for affordable housing development;
- iv. To provide access to land for the promotion of socio-economic empowerment opportunities; and
- v. To ensure that market related values are charged for alienated properties towards optimum revenue collection.

## 3 DOCUMENT DEFINITION

### 3.1 Review

This Policy document shall be reviewed at least annually or more frequently, given the changing nature of the regulatory, control and operational environment of the Municipality.

A record of amendments to this policy must be kept in accordance with section **Error! Reference source not found.** below.

### 3.2 Scope of application

This Policy is applicable to:

- i. All Municipal owned properties and must be complied with in every case where the transfer, disposal and letting of immovable property are dealt with;

- ii. The granting by the Municipality of rights to use, control or manage immovable property.

All applications must be referred in the first instance, to the Disposal Committee.

### **3.3 Effective Date**

The Immovable Property Management Policy will come into effect from \_\_\_\_\_ as per Council resolution \_\_\_\_\_.

## 4 TERMINOLOGY

### 4.1 Abbreviations and Definitions

In this Policy, the following words shall have the meaning described hereunder unless the context indicates otherwise.

Acquire	Acquire in relation to land includes, but is not limited to acquisition by purchasing, expropriation, exchange, donation or leasing, or as a result of the conclusion of any farm of land availability agreement, and 'acquisition' has a corresponding meaning.
Acquisition	Obtain ownership of or rights to immovable property in the name of the Municipality through purchase, donation, auction and lease.
Alienation	Disposal of Municipal-owned immovable property by means of sale, land availability agreement, land swap, donation and lease.
Basic municipal service	Means a Municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health, safety or the environment.
Cancellation	Termination of contract due to breach, effluxion of time and/or by mutual agreement where after the property and use thereof shall revert to the owner / Municipality.
Immovable property	Immovable property in terms of this policy, means land and other immovable property which vests in the Municipality;
Class of property	Means a grouping of assets of a similar nature or function in the Municipality's operations that is shown as a single item for the purpose of disclosure in the financial statements;
Closed bid	The open process of calling for bids on the alienation of specified immovable property from a specified group as defined by the Council from time to time.
Commencement date of contract	Date of last signature of the contract by the last signing party to the agreement and/or as determined in the contract.
Community assets	Means any asset that contributes to the community's well-being such as parks, libraries and fire stations.
Competitive process	Means a call for alternative proposals, a closed tender, a public tender or a public auction.
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.
Cost	Means the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire an asset at the time of its acquisition or construction or where applicable, the amount attributed to that asset when initially recognized in accordance with the specific requirements of GRAP.
Council	Means the Council of the Msukaligwa Local Municipality as envisaged in chapter 3 of the Municipal Structures Act (Act No. 117 of 1998).
Date of sale / acquisition	Date of last signature of the contract by the last signing party to the agreement and/or as determined in the contract.
Development	Construction of a structure in terms of the National Building Regulations Act, 1977 as amended after plans are approved by the Municipality.

Development proposal	Written suggestion for rights to use / develop Municipal-owned property.
Disposal	Notwithstanding the meaning thereof in the Municipal Asset Transfer Regulations, means: a) The demolition, dismantling or destruction of the immovable property; or b) Any other process applied to immovable property which results in loss of ownership of the immovable property otherwise than by way of transfer of ownership.
Donation	Alienation or acquisition of immovable property at no fee.
Msukaligwa Local Municipality's Property	Means all the immovable property owned and managed by the Msukaligwa Local Municipality in terms of this Policy.
Ennoblement	Means either refurbishing, where a property is redecorated, service systems are removed or upgraded, and where applicable, refurbishing is done; and/or developing or redeveloping where structures are erected or structural changes are made; and/or re-planning, where the initial zoning and purpose of a property are changed.
Executive mayor	Means an Executive Mayor elected in terms of section 55 of the Municipal Structures Act 117 of 1998.
Exempted immovable property	Means immovable property which is exempted by section (14)(6) or section 90(6) of the MFMA, that is, an asset that is needed for the provisions of basic municipal services.
Expropriation	To unilaterally acquire ownership of property by taking away the owner's rights if it is in the public interest and through a legislative process in terms of the relevant legislation.
External stakeholder	Any person other than an employee of the municipality or a councillor acting in their official capacity.
Fair market value	Fair market value in relation to immovable property, means the value at which a knowledgeable willing buyer and a knowledgeable willing seller would sell the immovable property in an arm's length transaction.
Granting of rights to use, control or manage	Means where the granting of such rights do not amount to the transfer or permanent disposal of an asset, for example when a right is acquired through a leasing, letting or hiring out arrangement.
GRAP	Means Generally Recognized Accounting Practice.
Heritage assets	Means assets of cultural, environmental or historical significance such as works of art, historical buildings and statues.
Infrastructure assets	Means any asset that is part of a system or network of similar assets, is immovable and specialized in nature such as roads, water reticulation schemes, sewerage purification and trunk mains and power supply systems.
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).
Internal stakeholder	An employee of the municipality or a councillor acting in her official capacity.

Investment properties	Means property (land or a building or part of a building or both) held to earn rentals or for capital appreciation or both, rather than for – use in the production and supply of goods or services or for administrative purposes; or sale in the ordinary course of business.
Lease	An agreement by which the owner of property allows another to use it for a specified time in return for a specified amount of money.
LED strategy	Means the Local Economic Development Strategy of the Municipality.
Long term	Means a period of longer than three years.
Low income earners	People who earn a household monthly income as determined from time to time by the National Department of Human Settlements.
Market related value	Means the estimated amount for which a property should exchange (lease / sale / purchase) on the date of valuation as determined by the Council's Valuer (a Valuer must be registered in terms of the relevant legislation) between a willing buyer and willing seller in an arms' length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion.
MATR	Means the Local Government: Municipal Finance Management Act, 2003 Municipal Asset Transfer Regulations promulgated in terms of the MFMA and published in Government Gazette No. 31346 of 22 August 2008.
Memorandum of understanding	An agreement stipulating a working relationship to implement mutual objectives between parties with regard to the sale / acquisition of land.
MFMA	Means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) and all regulations promulgated in terms of the Act.
Middle income earners	People who earn a household monthly income as determined from time to time by the National Department of Human Settlements.
Municipal Manager	Means a person appointed by the municipality in terms of section 82 of the Municipal Structures Act and who are the Head of Administration and also the Accounting Officer for the Municipality.
Municipal valuation	Means the official valuation of an immovable property as reflected in the Municipality's valuation roll.
Municipal valuer	Means a person designated as a municipal valuer in terms of section 33 (1) of the Local Government: Property Rates Act (Act No. 6 of 2004).
Municipality	Means when referred thereto as: <ul style="list-style-type: none"> <li>a) An entity, the Msukaligwa Local Municipality as a municipality described in Section 2 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), including a duly authorized official of the Municipality; and</li> <li>b) A geographical area, the area of jurisdiction of the Municipality as determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998).</li> </ul>
Non-exempted immovable property	Means municipal immovable property which is not exempted by section 14(6) or section 90(6) from other provisions of the MFMA, that is, immovable property that is not needed for the provision of basic municipal services.

Non-viable property	Means Property that, owing to urban planning, physical constraints or extent cannot be developed on its own or function as a separate entity and that can therefore become functional only if used by an adjoining owner in conjunction with such owner's property.
Open / public bid	The open process of calling for bids on the alienation of specified immovable property from the public or unspecified person(s).
Organ of state	Means an organ of state as defined in the MATR;
PBO	Means a public benefit organisation referred to in section 30 of the Income Tax Act, 1962, undertaking a public benefit activity as referred to in the ninth schedule to the Income Tax Act, 1962.
Policy	Means the Immovable Property Disposal policy set out in this document.
Preferential procurement policy framework act	Means the Preferential Procurement Policy Framework Act, 5 of 2000, including any regulations promulgated in terms thereof from time to time.
Property right	Means a right to use, control or manage a Property for a period exceeding a Calendar Month, as granted by the Msukaligwa Local Municipality without ceding legal ownership in the Property. For the avoidance of any doubt, a servitude, way leave or encroachment in, on, over or under Property granted by the Msukaligwa Local Municipality, constitutes a Property Right.
Property transaction	Means either a Disposal of Property or the granting of a Property Right.
Public auction	The open process of alienating property at a specified date, time and place to the highest bidder from the public.
Public open space	Any land zoned for use by the general public as an open space, park, garden, recreation site, sport fields or square.
Public-Private Partnership	Means a Public-Private Partnership as defined in the Municipal Public-Private Partnership Regulations promulgated under the MFMA and published under GN R309 in Government Gazette No. 27431 of 1 April 2005.
Residential / Commercial / Industrial land not immediately required for the Municipality's needs	These are typically land parcels that have been acquired for a capital project, which has yet to commence.
Road reserve	A portion of land reserved for Municipal services and pedestrians traffic.
SCM Regulations	Means the Municipal Supply Chain Management Regulations promulgated in terms of the MFMA and published under GN 868 in Government Gazette No. 27636 of 30 May 2005; 7.
SDF	Means the Spatial Development Framework of the Municipality.
Servitude	Rights over property or a portion thereof registered against the title deed of that property.
Social benefit	Is defined as services provided by registered welfare, charitable, non- profit and religious organisations.
Supply Chain Management Policy	Means the Supply Chain Management Policy of the Municipality as contemplated in chapter 11 of the MFMA and the Supply Chain Management Regulations (GNR 868 of 30 May 2005).

Systems Act	Means the Local Government: Municipal Systems Act, 32 of 2000.
Accounting Officer	Means the Municipal Manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and being the Head of Administration and Accounting Officer in terms of section 60 of the Local Government: Municipal Finance Management Act 2003 (Act No. 56 of 2003).
Asset Transfer Regulations	Means the Municipal Asset Transfer Regulations, 2008 made in terms of the MFMA and published under GN R878 in GG 31346 of 22 August 2008.
Chief Financial Officer	Means an officer of the Municipality designated by the Municipal Manager to be administratively in charge of the budgetary and treasury functions of the Municipality.
Transfer	In relation to a capital or subsidiary asset, means transfer of ownership in the asset as a result of a sale or other transaction.
Transfer agreement	Means an agreement in terms of which immovable property is disposed of by the Municipality.
Viable immovable property	Means property that shall be deemed to be property that can be developed and function as a separate entity and can be registered as a separate entity in a Deeds Registry.
Zoning	A land use right conferred on a land entity in terms of an approved Piet Retief Town Planning Scheme or approved Amendment Scheme.

Words and expressions defined in the MFMA, MATR or GRAP shall have the meanings assigned to such words and expressions in the MFMA, MATR and GRAP, as the case may be, and should words and expressions be used that are defined in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000). Such words and expressions shall have the meanings assigned to them in the said Act.

## **5 POLICY STATEMENT**

### **5.1 Introduction**

Msukaligwa Local Municipality deems it necessary to have a policy for the effective management of its immovable property. In this regard the Municipality realises that the assets owned and controlled by it, is a prime source at its disposal, for fulfilling its constitutional mandates for delivery of sustainable services, social and economic development, promoting a safe and healthy environment and fulfilling the basic needs of the community.

This policy is consistent with the Municipality's strategic objectives which include realising spatial integration, affordable housing, sensitive and complementary economic development, as well as the strengthening of existing commercial nodes.

In accordance with its constitutional imperatives and obligations, the Council is required to inter alia, ensure that it acts on behalf of the public good and for the best interest of its citizens. In so doing, the Council must uphold principles of fairness and transparency.

In the exercise of its powers, duties and functions, the Council has the right to acquire and dispose of land and other immovable property.

### **5.2 Overall Objectives**

The objective of this policy is to provide procedures in which the Municipality may dispose of and acquire immovable property. When implementing this policy the MFMA, MATR and the Supply Chain Management Policy will be the Municipality's driving force.

- a) This policy intends to:
  - i. Promote local, social and economic development in line with the Municipalities development strategies;
  - ii. Provide a policy framework for the management of the Council's immovable property in accordance with the Municipality's Supply Chain Management Policy; and
  - iii. Ensure that land and other immovable property held by it, which are not envisaged for or already used for public purposes and/or in the public's interest, be dealt with in a manner that will ensure the greatest benefit to the Council and the community.
- b) The objective of this policy is to ensure:

- i. Compliance with the applicable legislations, regulations and ordinances;
  - ii. Fairness, equitable, transparency, cost effectiveness and competitiveness;
  - iii. Speedy availability of land to developers and the residents;
  - iv. That the economic transformation of the municipality is promoted; and
  - v. The promotion of investment and development.
- c) Values to be achieved by the policy are:
- i. Income generation;
  - ii. Empowerment of the Historically Disadvantaged Individuals; and
  - iii. Furthering the aims and objectives of the Spatial Development Framework (SDF) and the Town Planning Scheme of the Municipality.

### **5.3 Related Policies**

This policy must be read:

- i. With the Supply Chain Management Policy of the Msukaligwa Local Municipality and the Municipal Asset Transfer Regulations (R 878 of 22 August 2008) issued in terms of the MFMA; and
- ii. In conjunction with any other applicable policies of the Municipality.

Should this policy be in conflict with any of the Municipal policies, this policy shall be given effect to unless it shall result in the transgression of any law or measure having the force of law.

### **5.4 Responsibility**

The Director: Corporate Services shall be:

- i. Along with the various Department Managers be responsible to bring the content of this Policy to the attention of all parties concerned; and
- ii. The custodian of this Policy, and shall be responsible for its implementation, monitoring and evaluation.

### **5.5 Availability**

A copy of this policy and other relevant documentation is available on the Msukaligwa Local Municipality's website.

## **6 LEGISLATIVE FRAMEWORK**

The guiding principles used in developing the Municipality Immovable Property Management Policy were sourced from the following legislation, frameworks and best practices:

- i. Broad Based Black Economic Empowerment Act (Act No. 53 Of 2003);
- ii. The Constitution Of The Republic Of South Africa, 1996 (Act 108 Of 1996) ("The Constitution");
- iii. Development Facilitation Act (Act No. 67 Of 1995);
- iv. Government: Municipal Finance Management Act 2003 (Act 56 Of 2003);
- v. Housing Act No 107 Of 1997;
- vi. Local Government Municipal System Act 2000 (Act 32 Of 2000);
- vii. Local Government Ordinance 1939 (Ordinance 17 Of 1939);
- viii. Local Government: Municipal Finance Management Act (2003): Municipal Asset Transfer Regulations (GN R878 In GG 31346 Of 2008)(Hereafter Referred To As The Regulations);
- ix. Local Government: Municipal Finance Management Act (Act No. 56 Of 2003): Municipal Supply Chain Management Policy Regulations (General Notice 868 In GG 27636);
- x. Local Government: Municipal Structures Act (Act No. 117 Of 1998);
- xi. Preferential Procurement Policy Framework Act (Act No. 5 Of 2000);
- xii. Preferential Procurement Policy Framework Regulations (GN R725 Of 10 August 2001) Issued In Terms Of The Preferential

- Procurement Policy Framework (Act No. 5 Of 2000);
- xiii. Property Rates Act (Act No. 6 Of 2004);
  - xiv. The Extension Of Security Of Tenure Act 62 Of 1997;
  - xv. The Prevention Of Illegal Eviction From And Unlawful Occupation Of Land Act 19 Of 1998; and
  - xvi. The Restitution Of Land Rights Act 22 Of 1994.

## **7 PRINCIPLES**

### **7.1 Governing Principles**

This policy as directed by the MATR is governed and must be implemented in accordance with the following principles:

i. **Valuation principle**

I.e. the need to attach a value to the transfer or disposal of municipal immovable property, in order to ensure that the interests of the municipality, and of its stakeholders, are not prejudiced by the transfer or disposal.

ii. **Continuity of service principle**

I.e. the need to ensure the uninterrupted continuance of a municipal service when municipal immovable property that is being used in the delivery of that service, is transferred or disposed of, particularly when the property is used in the provision of the minimum level of basic municipal services.

iii. **Risk transfer principle**

I.e. the need to transfer the risk relating to municipal immovable property in conjunction with the transfer of the property.

iv. **Asset preservation principle**

I.e. the need to prevent the indiscriminate or unsustainable transfer or disposal of municipal immovable property in order not to undermine the ability of the municipality to render or expand municipal services in the longer term.

*[MATR, section 3]*

### **7.2 Powers Of Council**

- a) Council must 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.
- b) Council must reserve and manage immovable property in its ownership for its purposes and operation needs.
- c) The Council may acquire immovable property and rights in property in terms of the Municipality Supply Chain Management Policy.
- d) Council may alienate or let immovable property and rights in property in its ownership by way of the methods listed in section 9.3 of this policy.
- e) 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.

*[MFMA, section 14(2)]*

- f) Before alienating immovable property or rights in 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 or rights is retained by Council.
- g) All processes for the disposal of immovable property must be considered in accordance with this policy framework as set out below.
- h) 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 of 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.
- i) 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 dispose of it completely.
- j) A decision by the Council that a specific immovable property is not needed to provide the minimum level of basic Municipal

services, may not be reversed by the Council after that asset has been sold, transferred or otherwise disposed of.

[MFMA, section 14(3)]

- k) The Council is not obliged to consider an unsolicited bid (i.e. a proposal received outside the normal bidding process and by private treaty) for the purchase or disposal of Municipal immovable property.

[MSCMR, section 37(1)]

***In all transactions that the Municipality enters into, there should be maximum benefit to the Municipality, its operational requirements and the broader community.***

### 7.3 Property Management Principles

The Municipality has adopted a holistic approach to the disposal or transfer of immovable property, that gives due regard to the following principles:

- a) The strategic objectives, as adopted from time to time, and as reflected in other policies, such as Council's Integrated Development Plan and the Spatial Development Framework;
- b) The best and optimal utilisation, reserve and management of the Municipality's immovable property to promote social integration, to redress existing spatial inequalities, to promote economic growth, to build strong, integrated and dignified communities and to provide access to residential opportunities, services, amenities, transport and opportunities for employment;

[MSA, section 86(2)(b)(ii)]

- c) The management of immovable property as a sustainable resource, and where appropriate, the leveraging of the environmental, social and economic return on such property while the Municipality retains ownership thereof;
- d) Taking cognisance of population growth and mobility, environmental, historical sensitivities and economic changes and take that into account when decisions are made regarding the disposal of immovable properties;
- e) The promotion of preference to persons historically disadvantaged by unfair discrimination;
- f) Recognise that immovable property is part of a heritage that needs to be safeguarded for utilisation by future generations;
- g) To alienate immovable property only in circumstances where the Municipality is satisfied that it cannot derive a reasonable economic and/or social return from continued ownership of the property;
- h) Ensure that only assets that do not provide the minimum level of basic Municipal services are disposed of;
- i) Ensure that immovable property are not disposed when the disposal of the property or the terms of the disposal of the property could disadvantage the Municipality or community financially or otherwise;
- j) Implementation of the MATR in accordance with the MATR's governing principles of valuation, continuity of service, risk transfer and asset preservation;
- k) Any gain that will be realised or any loss and all associated costs that will be incurred by a Municipality in respect of the transfer or disposal of, or the granting of a right to use, control or manage, an asset, if not budgeted for in the approved annual budget of the Municipality, must be included in the next adjustments budget of the Municipality referred to in section 28 of the MFMA; and
- l) Unless otherwise provided for in this policy, vacant or improved immovable property and rights in immovable property shall be alienated at market value and taking in consideration the economic and community benefits and shall be affected by means of a process of public competition.

[MFMA, section 14]

## 8 GUIDELINES AND RESTRICTIONS

### 8.1 High Value Assets

- a) The Municipality will firstly have to determine whether the immovable property to be alienated is considered a high value capital asset.
- b) If the combined value of such capital assets exceeds five percent of the total value of its assets (as determined from latest available audited financial statements), all immovable property will be treated as "high value" assets in terms of the MATR and all leases as "long term high" leases, and a public participation process must be followed for each of the immovable properties to be disposed of, irrespective of each immovable property's individual value.
- c) High value in relation to the sale of an individual immovable property of the Municipality, means that the fair market value of the immovable property exceeds any of the following amounts:

- i. R50 million;
- ii. 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
- iii. R10 000 as determined by resolution of the Council of the Municipality (must be less than (a) or (b)).

*[MATR, Section 1 & 5(2)]*

- d) High value in relation to the letting of an individual immovable property of the Municipality, means that the fair market value of the immovable property exceeds any of the following amounts:
  - i. R10 million; or
  - ii. A long term right is proposed to be granted in respect of the immovable property.

*[MATR, Section 34(2)]*

## **8.2 Minimum Level Of Basic Municipal Services**

- a) Whenever the Council has to decide whether or not immovable property is needed to provide the minimum level of basic Municipal services, it shall do so based on a report or reports comprehensively describing:
  - i. The usage of the asset concerned;
  - ii. The consequences, if any, in relation to public health, safety and the environment should the asset be disposed of; and
  - iii. The availability of other assets that would be available to provide the services should the asset concerned be disposed of.

*[MFMA, section 14(1)]*

## **8.3 Economic And Community Value**

- a) Whenever the Council has to consider the economic and community value to be received in exchange for immovable property to be disposed of, the Council shall do so based on a report or reports:
  - i. Comprehensively quantifying in Rand the real or reasonably expected economic benefits;
  - ii. The realistically achievable value the Community can expect to receive from the disposal in question; and
  - iii. Setting out the periods within or over which these economic and Community values are expected to materialise.
- b) For purposes of this section, the Community shall include any significant segment of the Community residing within the greater region of the Municipality.

## **8.4 Disposal Before Ennoblement**

- a) Immovable property will be disposed of before ennoblement when:
  - i. Ennoblement of the property will not necessarily increase the value of the property;
  - ii. It is too costly to ennoble the property and it will be cheaper to dispose of the property and allow the purchaser to ennoble the property;
  - iii. It is disposed to other organs of state or to other institutions for Community purposes below market value; and
  - iv. Municipal houses superfluous to the official needs of the Municipality are disposed of (excluding where services must be provided or upgraded before transfer of the house can be affected, but exclude the upgrading of the house).

## **8.5 Disposal After Ennoblement**

- a) Immovable Property may be ennobled before disposal when:
  - i. Ennoblement of the property will increase the disposal value of the property;
  - ii. It will relieve pressure on the private developer to obtain approval after disposal while it will be to the benefit of the Municipality and the Community to rezone the property before disposal;
  - iii. The Municipality wants to ensure that the property be developed for a specific purpose or to add value to the environment / Community;
  - iv. The ennoblement of the property can empower Communities by means of job creation, etc.

## **8.6 Restrictions**

- a) Political Office bearers and officials in the employ of the Municipality shall **NOT** have the right to make an offer for acquisition of immovable property being disposed of by the Municipality, **unless the property have been made available during an open process and the relevant official was not involved with the processes and appropriately declared their interest as per paragraph (b) below.**

A Political Office-bearer or an official in the employ of the Municipality who, in his / her personal capacity, has a direct or indirect interest in an immovable property proposed for disposal, shall declare such interest. Failure to disclose such interest will result in such sale or lease being cancelled forthwith and the employee / office bearer held responsible for wasted costs.

- b) An official in the employ of the Municipality shall **NOT** act as a member of a panel responsible for assessing and adjudicating proposed disposals if his / her presence in such panel may potentially be deemed to be unfairly influential, discriminatory or in any manner contrary to the principles of this policy.

[MSA, section 5(1)]

[MSCMR, section 46(2)(e)&(f)]

## 9 THE PROCESS FOR ALIENATION OF IMMOVABLE PROPERTY

### 9.1 Origination Of Alienation Process

Any interested party / parties or official acting in his / her official capacity may initiate the process of alienation by submitting a written application or report to the relevant department for comments in terms of the policy.

#### 9.1.1 Internal / External Stakeholder

The Disposal Committee or the external stakeholder (through the Disposal Committee) may recommend to the Council in terms of the policy that an identified property be alienated for purposes of advancing the vision, mission and strategic objectives of the Municipality.

#### 9.1.2 Low Income Earners (The Poor)

- a) Any Low Income Earner may propose that a residential property be alienated to him / her for private development. The determining factor will be the fact that the bidder complies with the criteria of "poor" as stated in section 9.8(a) of this policy.
- b) The Low Income Earner must occupy the property for a period of at least five years before alienation to a third party is allowed.
- c) The Low Income Earners must develop their property for the purpose of which it was allocated.
- d) Failure to comply will lead to:
- i. The property reverting back to the Council; or
  - ii. That the Low Income Earners be obliged to pay the full valuation price as valued by an independent Valuer.

#### 9.1.3 Social-Economic Organisations

- a) Social-economic organisations (social users) are as defined in section 9.9(b) of this policy.
- b) The Disposal Committee based on the motivation of the proposed development from the institutions referred to above may consider and recommend to Council that land be alienated to such an institution as per Municipal Valuation Roll or at the nominal fee as determined by the Council in terms of the relevant legislation.
- c) It should be a condition of the sale that the immovable property shall only be used for the purposes as stated in the constitution of that institution (as at date of the alienation of the immovable property) and no other purposes whatsoever. The institution shall not lease or alienate the immovable property for any purposes other than for the purposes of non-profit or Community based organisations prior to the approval of the Council.
- d) Failure to comply with the condition will lead to the property reverting back to the Council.

### 9.2 Categories Of Municipal Properties And Potential Manner Of Disposal

This process of alienation is applicable to all immovable properties zoned as:

- a) Residential / Commercial / Industrial:
- i. Viable:

- Ownership or letting will be offered by means of an open competitive bidding process;
  - The property will be priced at market related value; and
  - Bulk land parcels will only be released if it is identified as available for disposal or letting in the Municipality's IDP.
- ii. Viable, not immediately required for the Municipality's needs:
- The property will be offered on a short- to medium- term lease basis;
  - The rental will be market related;
  - The property will be offered by an open competitive bidding process; and
  - In the event of multi-tenanted premises, a fixed 3 to 5 year lease period will be offered in keeping with normal business practices (commercial and industrial land).
- iii. Non-viable:
- Ownership or letting could be offered to the respective adjoining owner;
  - The property will be priced at market related value; and
  - The purchaser will be responsible for any and all costs associated with the possible relocation of services, re-zoning, survey, registration and transfer.
- b) Social Care Uses:
- i. Ownership will be offered by means of competitive bidding;
  - ii. Bidders will be subject to a screening process that will take account of inter alia the needs of the Community, nature of the organisation and ability to discharge intentions;
  - iii. Will be subject to a predetermined price that is market related, or as may be determined by Council; and
  - iv. Will be subject to development clauses to ensure discharge of intentions.
- c) Sport facilities and other public amenities.
- i. Land will be offered on a leasehold title basis; and
  - ii. The lease will be subject to development clauses to ensure the discharge of intentions.

***Unless the plight of the poor or public interest demands otherwise or an exception is made by the Council on recommendation of the relevant department.***

### **9.3 Methods Of Disposal**

The disposal and letting of immovable property owned by the Municipality depends on the category allocated to the relevant property as per section 9.1 of this policy.

The disposal and letting of immovable property, irrespective of the method of disposal or letting used, must:

- a) Be fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy;
- b) Be at fair market value except when the public interest or the plight of the poor demands otherwise.

Immovable property once categorised may be disposed or let in accordance with one of the following described methods:

- a) Sale or Letting through a Public Bid Process
  - i. All sales and letting of immovable assets should be at current market value except when the public interest or the plight of the poor demands otherwise as per section 9.8 of this policy. All transactions are subject to the provisions of the Municipal SCM Policy and System and those contained in this policy.

*[MSCMR, section 40(2)(b(i))]*

- ii. An Agreement of Lease, should be concluded, clearly describing all salient details i.e. the parties, immovable asset(s), rental payable, conditions, duration and breach of the Lease Agreement. A cession of a Lease does not fall within the requirements of Section 14 of the MFMA.
- b) Donation
- i. The donation ("gratis" transfer) of an immovable property to other organs of State or to CBO's, NGO's, NPO's, and Civil Society Organisations, in furtherance of Socio-Economic and Environmental Objectives may be considered by the

Council.

c) Exchange

- i. The process of exchange means that a disposal and an acquisition is taking place simultaneously and therefore the rules of both must apply and usually occurs where one party approaches another to purchase an immovable property and instead of a purchase price being agreed, the parties exchange ownership of their respective properties.
- ii. Should one immovable property be of a higher monetary value than the other, a cash payment equivalent to the shortfall (being the difference between the two values) shall be made by the party whose asset is of lesser value.

*[MATRG, Section 3.3.1]*

d) Public Private Partnership

- i. In the context of disposals, a PPP is a transaction between the Municipality and a private party.
- ii. A PPP agreement may only be entered into following the provisions of Section 120 of the MFMA.

*[MFMA, Section 120]*

e) Transfer between spheres of government

- i. Where the Council holds an immovable asset that is identified as essential for the furtherance of Socio-Economic objectives or owner occupation of spheres of government, transfer of such asset for this purpose shall, as much as possible, take preference over any other proposed disposal for which that asset may be earmarked. Such disposal shall be dealt with in terms of the requirements of the MFMA.
- ii. Transfer of immovable assets contemplated above shall be subject to a clearly defined reversionary clause, providing for a reversion of ownership to the Municipality, free of charge, in the event that the immovable property is no longer to be used for the specified socio-economic purpose or owner occupation by a government department concerned.

*[MATR, Chapter 3]*

f) Unsolicited bids

- i. The Municipal SCM Policy provides that the Municipality is in terms of Section 113 of the MFMA not obliged to consider unsolicited bids received outside a normal bidding process;
- ii. If the Municipality decides in terms of Section 113(2) of the MFMA to consider an unsolicited bid, it may do so only if:
  - The product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - The product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the Municipality; and
  - The reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer;
- iii. If the Municipality decides to consider an unsolicited bid that complies with section (ii) above, the Municipality must make its decision public in accordance with Section 21A of the Municipal Systems Act, together with:
  - Its reasons as to why the bid should not be open to other competitors;
  - An explanation of the potential benefits for the Municipality were it to accept the unsolicited bid; and
  - An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice;
- iv. Once the Municipality has received written comments pursuant to section (iii) above, it must submit such comments, including any responses from the unsolicited bidder, to the National Treasury and the relevant Provincial Treasury for comments;
- v. The Adjudication Committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations;
- vi. A meeting of the Adjudication Committee to consider an unsolicited bid must be open to the public;
- vii. When considering the matter, the Disposal Committee must take into account:
  - Any comments submitted by the Public; and
  - Any written comments and recommendations of the National Treasury or the relevant Provincial Treasury;
- viii. If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations; and
- ix. Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no

contract committing the Municipality to the bid may be entered or signed within 30 days of the submission. The requirements of the contents above, does not apply to unsolicited bids which are submitted in terms of paragraph (h) below.

*[MSCMR, Section 37]*

g) Special Circumstances (Private Treaty)

- i. The Municipality acknowledges that in certain special circumstances property can be sold or let by Private Treaty. These special circumstances apply to the following categories of properties:
  - Properties identified for sale and hire to CBO's, NGO's, NPO's and Public Benefit Organisations defined by the Income Tax Act and listed in schedule 9 of the Act. (Category land listed in section 9.9 of this Policy);
  - Non-viable parcels of land may be let or sold to adjoining owners. The determination of non-viability rests with the Council and its decision will be final;
  - Viable properties in the case of business and industrial expansion and retention, may be let or sold to the adjoining owners at market related prices;
  - Vacant industrial land;
  - Vacant land for the development of lower income housing in the categories of low cost, social and bank charter housing;
  - Municipal land for Community projects;
  - Municipal property for educational purposes other than private schools;
  - Municipal property for disposal or letting to registered business cooperatives; and
  - The sale of Municipal owned property, subject to a long term registered lease, of ten years and longer, where the sale of the freehold rights is of greater benefit to Council than the present value of the income flow from rental. This provision does not apply to Council owned property that is multi-tenanted. Such a sale must only take place after a proper cost benefit analysis has been undertaken. The analysis must include the following:
    - Current market value, mindful of the provisions of MATR 29;
    - Replacement cost;
    - Income streams / cash flow analysis;
    - Economic life expectancy;
    - BBBEE considerations;
    - Strategic importance;
    - Possible future use; and
    - Current lease clauses;
- ii. Airport land for aviation purposes; and
- iii. Previously disadvantaged areas identified by the Municipality, where the local economy is stagnant and remedial steps will require special treatment.

*[MATR, Section 11(d)]*

*[MSCMR, Section 37(1)]*

## **9.4 Pricing**

### **9.4.1 Sale Or Lease At Less Than Fair Market Value**

- a) The municipality, as a general principle and subject to the provision mentioned below, shall not:
  - i. Let immovable property at a rental lower than the rental determined in accordance with section 9.4.2 of this Policy, as may be applicable;
  - ii. Sell, alienate or dispose of immovable property or grant a servitude or alienate a right in immovable property in an amount lower than the amount determined in accordance with section 9.4.2 of this Policy, as may be applicable; and
  - iii. Exchange immovable property for other property if the amount at which the other property has been valued is lower than the amount at which the immovable property which the municipality wishes to exchange, has been valued in accordance with section 9.4.2 of this Policy, as may be applicable:

- Provided that, in cases when the public interest or the plight of the poor demands otherwise, and after taking into account the provisions of section 13 (2) MATR and subject to a successful application for a departure to the National Treasury in terms of section 170 of the MFMA, such property may be let, sold, exchanged or be encumbered with a servitude or right in return for compensation below the market related value which value shall be determined by resolution of the Council which resolution shall also contain the reasons for such action.

*[MSCMR, Section 40(2)(b)(i) & (c)(i)]*

#### **9.4.2 Determination Of Upset Price**

The upset price for immovable property to be disposed of or leased by way of a competitive process will be determined in such a way that it corresponds with a fair market value and must include the recoverable development costs such as Municipal services, advertising and survey costs.

The fair market value or the rental amount of immovable property shall be determined as per section 15 of this policy by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing Act at the cost of the purchaser or lessee, as the case may be.

*[MSCMR, Section 40(2)(b)(i)]*

#### **9.5 Exempted Assets**

- a) An exempted immovable property is an asset exempted from the rest of sections 14 or 90 and the SCM Regulations. An asset is only considered to be exempted when the transfer is made to another organ of state, and that transfer is the result of any one of the following six circumstances:
  - i. When the Municipality reviews its service delivery mechanisms in terms of Chapter 8 of the MSA, and appoints another organ of state to undertake the service;
  - ii. When there is a reorganisation of powers and functions between the Municipality and its Municipal entity;
  - iii. When the Municipality's powers or functions are assigned to another organ of state as a result of national legislation or a power contained in national legislation;
  - iv. When the Municipal housing or land is transferred to a national or provincial organ of state for the poor in terms of national or provincial housing policy;
  - v. When the transfer is required or permitted by national legislation that determines the conditions of the transfer; or
  - vi. Any other circumstance not provided above, on condition that the asset to be transferred is considered by council to be not needed to provide a minimum level of basic Municipal service and is surplus to the requirements of the Municipality and entity.
- b) In any of the above situations, the asset to be transferred is considered exempted from section 14 and 90 of the MFMA and the SCM Regulations. In these situations, Chapter 3 of the regulations will apply.
- c) This means that in terms of the circumstances described above, the Municipality may consider the transfer of immovable property needed to provide a minimum level of basic Municipal service to another organ of state, subject to conditions outlined in Chapter 3 of the regulations.
- d) It is the final decision of the Municipality whether an exempted immovable property is transferred to another organ of state for compensation. Chapter 3 of the regulations provides certain factors that should be considered before a decision is made regarding compensation (see section 11.8 of this Policy).

The detailed process for the alienation of exempted assets is provided in section 11 of this policy.

*[MATR, Section 20]*

*[MFMA, Section 14(6)]*

#### **9.6 Non-Exempted Assets**

- a) If the transfer or disposal is not the result of any of the circumstances listed in section 9.5 of this policy, the asset to be transferred or disposed of will be considered to be a non-exempted immovable property where sections 14 and 90 of the MFMA and the SCM Regulations will apply. In these situations therefore:
  - i. The Municipality may not transfer or dispose of immovable property needed to provide a minimum level of basic municipal service;
  - ii. The Municipality in making the decision as to whether an immovable property is required to provide a minimum level of basic Municipal service, must make that decision and consider the fair market value, and economic and Community value to be

received for the property at a meeting open to the public; and

- iii. Any transfer must be fair, equitable, transparent, competitive and consistent with the Municipality's SCM Policy.

The detailed process for the alienation of exempted assets is provided in section 10 of this policy.

*[MFMA, Section 14(1)-(5)]*

### **9.7 Grant Of Right**

- a) A right to use, control or manage an immovable property may include a lease, letting or hiring out arrangement for longer than one month where ownership is not lost or transferred to another party but temporarily let for a purpose. In this situation, ownership of the immovable property is retained by the party that has the legal ownership of the property.
- b) The purpose of this section 12 of this policy is to regulate the granting by Municipalities of rights to use, control or manage immovable property in circumstances where sections 14 and 90 of the MFMA and sections 10 and 11 of this policy do not apply.
- c) In the following instances the granting of such a right to use, control or manage the immovable property will be considered to be an asset transfer (regulation 33(3) and sections 10 and 11 of this Policy will apply), if the right to use the asset:
  - i. Is set for an indefinite or undetermined period,
  - ii. Is for a period which effectively exceeds the life of the asset,
  - iii. Confers an option to buy or acquire ownership in the asset; or
  - iv. Allows the person using the asset to become the beneficial (but not legal) owner.
- d) This section does not apply to the granting by Municipalities of:
  - i. Rights to use control or manage sections 10 and 11 of this Policy in terms of Public-Private Partnership agreements referred to in section 120 of the MFMA and the Municipal Public-Private Partnership Regulations published by Government Notice No. R.309 of 2005; or
  - ii. Rights on municipal land to housing for the poor to beneficiaries of such housing.

The detailed process for the alienation of exempted assets is provided in section 12 of this policy.

*[MATR, Section 33]*

### **9.8 Plight Of The Poor (Transfer For Less Than Fair Market Value)**

- a) For purposes of this policy, "the poor" shall mean persons who in absolute terms have little or effectively no material means, who do not earn a living wage and who, if it was not for outside direct or indirect financial assistance, would not have the food, clothing and housing required to satisfy a human being's basic needs in that regard.
- b) Generally the Municipality must receive fair market value for immovable property but where the plight of the poor or public interest demands otherwise it will be possible to consider a lesser value provided that the following matters are taken into account:
  - i. The interests of the state and the local Community;
  - ii. The strategic and economic interests of the Municipality;
  - iii. The constitutional rights and legal interests of all parties;
  - iv. Whether the interests of the parties to the transfer should carry more weight than the interests of the wider Community; and
  - v. Whether the local Community would be better served if the asset is transferred at less than its fair market value.
- c) It is considered that such assets should be provided to the poor based on need and not necessarily based on commercial principles provided that the process that guides the transfer remains fair, equitable, transparent and competitive.
- d) When Municipal housing or land is transferred to a national or provincial organ of state for housing for the poor then such transfer must be in accordance with Chapter 3 of the MATR, national or provincial housing policy and is exempted from the SCM Regulations.
- e) Chapters 2 and 4 (MATR) do not apply to the transfer of housing on Municipal land and the transfer or granting of a right to use that land for the poor to beneficiaries of such housing. In these instances, sections 14(1) to (5) and 90(1) to (5) of the MFMA and the SCM Regulations will apply, in addition to any other related legislation or national or provincial policy surrounding transfers of municipal land and housing.

The detailed process for the alienation of exempted assets is provided in section 13 of this policy.

*[MATR, Section 13(2)]*

### 9.9 Social Care Uses

- a) Immovable property may be alienated to social care users. Unless otherwise directed by Council, the purchase price payable shall be a discounted price subject to any conditions that the Council may wish to register against the title deed of the property, including reversionary provisions.
- b) Social care is defined as services provided by registered welfare, charitable, non-profit cultural and religious organisations and includes, but is not limited to, the following types of uses:
  - i. Place of Worship to the degree and for that portion of a facility being used for spiritual gathering by, and Social / pastoral/ manse/ welfare caring and support to Worshippers and the broader Community;
  - ii. Child care facility insofar as it contributes to the functioning of a multi-use childcare facility and is operated on a non-profit basis;
  - iii. Retirement villages for that portion of the building or facility available to general public use at subsidised / nominal prices;
  - iv. Schools or centres – utilised as homes for the handicapped and disabled persons;
  - v. Non-profit rehabilitation centres;
  - vi. Homes / centres for indigent, battered or destitute persons;
  - vii. Organisations for the homeless and elderly;
  - viii. Youth activity centres;
  - ix. Facilities for the accommodation, care and burial of animals; and
  - x. Cemeteries, NPO funeral parlours and non-profit crematoria.
- c) Organisations must be listed in schedule 9 of the Income Tax Act.
- d) Council reserves the right to entertain unsolicited bids for the purchase or lease of viable immovable property for social care uses with the proviso that it abides by Council's IDP objectives.
- e) The following factors shall be considered relevant in the selection and allocation of immovable property to places of worship:
  - i. The size of the congregation / membership;
  - ii. Availability of finance to acquire the site and develop same within two years plus possible extension;
  - iii. Whether or not such a denomination is already represented in the area;
  - iv. Whether or not welfare type facilities / activities will be provided in addition to religious facilities; and
  - v. Whether or not the congregation / membership is drawn from the area in which a site is being applied for.
- f) Land shall not be sold outright to social benefit organisations, it may be leased for five years and thereafter should they have developed the property, social benefit organisations will be afforded the first option to purchase such land.
- g) Should such immovable assets be the subject of further alienation to a third party, then the difference between the original purchase price and the market value shall revert back to council.

### 9.10 Servitude

- a) Servitude can be 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. Servitudes result in a burden on the immovable asset for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset.
- b) 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 must not be granted.
- c) Servitudes may be granted to any person (private or state organ) upon payment of appropriate market related compensation by such person 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. The party requiring the servitude is responsible for all costs relating to the granting and registration of the servitude.

[MATR, Section 48]

## 10 NON-EXEMPTED IMMOVABLE PROPERTY

### 10.1 General Provisions

- a) This Chapter does not apply to the transfer of:
- i. Non-exempted immovable property in terms of Public-Private Partnership agreements referred to in section 120 of the MFMA and the Municipal Public- Private Partnership Regulations published by Government Notice No. R.309 of 2005; or
  - ii. Housing on Municipal land and the transfer of that Municipal land for the poor to beneficiaries of such housing.

[MATR, Section 4, 3(a) & (b)]

- b) The Municipality may transfer ownership or otherwise dispose of immovable property contemplated in section 10.1(a) of this Policy, but only after:
- i. The Accounting Officer has, when the immovable asset or assets is considered to be high values assets, conducted a public participation process to facilitate the following determinations the Municipal Council must make:
    - Decide on reasonable grounds that the property is not needed to provide the minimum level of basic Municipal services; and
    - Consider the fair market value of the property and the economic and Community value to be received in exchange for the property.
  - ii. The Municipal Council:
    - Has made the determinations required by section 10.1(b)(i) of this policy; and
    - Has as a consequence of those determinations approved in principle that the immovable property may be transferred or disposed of.

[MATR, Section 5(1)]

[MFMA, Section 14(2)]

### 10.2 Authorisation of the public participation process

- a) Only the Municipal Council may authorise the public participation process referred to in section 10.1(b) of this policy.
- b) A request to the Municipal Council for authorisation of a public participation process must be accompanied by an information statement stating:
  - i. The valuation of the immovable property to be transferred or disposed of and the method of valuation used to determine that valuation;
  - ii. The reasons for the proposal to transfer or dispose of the immovable property; any expected benefits to the Municipality that may result from the transfer or disposal;
  - iii. Any expected proceeds to be received by the Municipality from the transfer or disposal; and
  - iv. Any expected gain or loss that will be realised or incurred by the Municipality arising from the transfer or disposal.
- c) The value of immovable property must for purposes of section 10.2(b)(i) of this policy be determined in accordance with section 15 of this policy and the accounting standards that the Municipality is required by legislation to apply in preparing its annual financial statements.
- d) In the absence of sufficient guidance in those accounting standards regarding the valuation of immovable property, the fair market value valuation methods must be applied.

[MATR, Section 5(3), (4), (5)]

### 10.3 Advertisement Of The Public Participation Process

- a) If the Municipal Council has in terms of section 10.2 of this policy authorised the Accounting Officer to conduct a public participation process in connection with any proposed transfer or disposal of an immovable property, the Accounting Officer must at least 60 days before the meeting of the Council at which the determinations referred to in section 10.1(b)(ii) of this policy are to be considered:
  - i. Make public the proposal to transfer or dispose of the immovable property together with the information statement referred to in section 10.1(b) of this Policy in the local newspaper or newspapers; and

[MSA, Section 21 (A)]

- ii. Invite the local community and other interested persons to submit to the Municipality comments or representations in respect

of the proposed transfer or disposal of the immovable property; and solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the matter.

- iii. Solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the matter.

[MATR, Section 6]

#### 10.4 Consideration Of Proposals To Transfer Or Dispose Of Non-Exempted Immovable Property

- a) The Municipal Council must, when considering any proposed transfer or disposal of a non-exempted immovable property take into account:
  - i. Whether immovable property may be required for the Municipality's own use at a later date;
  - ii. The expected loss or gain that is expected to result from the proposed transfer or disposal;
  - iii. The extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or deficit to the Municipality;
  - iv. The risks and rewards associated with the operation or control of the immovable property that is to be transferred or disposed of in relation to the Municipality's interests;
  - v. The effect that the proposed transfer or disposal will have on the credit rating of the Municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
  - vi. Any limitations or conditions attached to the immovable property or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
  - vii. The estimated cost of the proposed transfer or disposal;
  - viii. The transfer of any liabilities and reserve funds associated with the immovable property;
  - ix. Any comments or representations on the proposed transfer or disposal received from the local Community and other interested persons;
  - x. Any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury;
  - xi. The interests of any affected organ of state, the Municipality's own strategic, legal and economic interests and the interests of the local Community; and
  - xii. Compliance with the legislative regime applicable to the proposed transfer or disposal.

[MATR, Section 7]

#### 10.5 Discretionary Conditions On In-Principle Transfers

- a) When the Council provides an in-principle decision that a non-exempted immovable property may be transferred or disposed of, the Council of the Municipality may impose conditions on the transfer or disposal, including conditions to specify:
  - i. How the asset is to be sold or disposed of (within the framework set by the SCM regulations) - **other possible conditions of sale or lease are specified in section 14 of this policy**;
  - ii. A floor price or minimum compensation;
  - iii. Whether the asset can be transferred or disposed of for less than fair market value; and
  - iv. A framework in which direct negotiations with another person may apply, if relevant.

[MATR, Section 11]

#### 10.6 Transfer Or Disposal To Be In Accordance With Disposal Management System

- a) If approval has been given in terms of section 10.2(b) of this policy that a non-exempted immovable property may be transferred or disposed of, the relevant Municipality may transfer or dispose of the asset only in accordance with its disposal management system, irrespective of:
  - i. The value of the immovable property; or
  - ii. Whether the immovable property is to be transferred to a private sector party or an organ of state.
- b) The Municipality may not commence with the process referred to in section 10.6(a) of this policy unless approval in principle has in terms of section 10.2(b) of this policy been given that the relevant immovable property may be transferred or disposed of.

- c) In applying the process referred to in section 10.6(a) of this policy, the Municipality must consider the gain or loss that will:
  - i. Result from the transfer or disposal of the relevant immovable property; and
  - ii. Be recorded in the accounting records of the Municipality.

*[MATR, Section 12(1)]*

### **10.7 Circumstances When Direct Negotiations With Selected Bidders Are Allowed**

The disposal management system of the Municipality does not apply to the transfer of a non-exempted immovable property if:

- a) The Municipality:
  - i. Reviews in terms of Chapter 8 of the Municipal Systems Act its service delivery mechanisms for the performance of a Municipal service;
  - ii. Appoints a private sector party" through a competitive bidding process as the service provider for the performance of that Municipal service; and
  - iii. Transfers the immovable property as an integral component of the performance of that Municipal service to that service provider.
- b) The Municipality:
  - i. Appoints a private sector party or organ of state through a competitive bidding process as the service provider for the performance of a commercial service;" and
  - ii. Transfers the immovable property as an integral component of the performance of that commercial service to that service provider.
- c) The Municipality may negotiate directly with the selected service provider regarding the transfer of immovable property referred to in section 10.7(a), and (b) of this policy.
- d) The Municipality may not commence negotiations referred to in section 10.7(a) of this policy unless approval in principle has in terms of section 10.2(b) of this policy been given that the relevant immovable property may be transferred or disposed of.
- e) In conducting negotiations referred to in section 10.7(a) of this policy, the Municipality must consider the gain or loss that will:
  - i. Result from the transfer or disposal of the relevant immovable property; and
  - ii. Be recorded in the accounting records of the Municipality or Municipal entity.

*[MATR, Section 12(2)]*

### **10.8 Compensation For Transfer Of Non-Exempted Municipal Immovable Property**

- a) The compensation payable to the Municipality for the transfer of a non-exempted immovable property must, subject to section 10.8(b) of this policy:
  - i. Be consistent with criteria applicable to compensation set out in the disposal management system of the Municipality or Municipal entity; and
  - ii. Reflect fair market value.
- b) If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted immovable property for less than its fair market value, the Municipality must, when considering the proposed transfers, take into account the conditions set out section 9.8 (b) of this policy.

*[MATR, Section 13(1), (2)]*

### **10.9 Preconditions For Transferring Non-Exempted Immovable Property As Part Of Appointment Of Service Providers For Performance Of Municipal Or Commercial Services**

- a) If the Municipality intends to transfer to a private sector party or organ of state a non-exempted immovable property following the selection through a competitive bidding process of a service provider for the performance of a Municipal service referred to in section 10.7 (a) and 10.8 (a) of this policy or for the performance of a commercial service referred to in section 10.7 (b) and 10.8 (b) of this policy:
  - i. All assets needed or directly related to the performance of that service must be properly identified to distinguish those assets from the other assets of the Municipality or Municipal entity;

- ii. All decisions referred to in section 10.1 (b) of this policy relating to the transfer of the immovable property must be taken as an integral part of the broader decision-making process on the appointment of a service provider for the performance of that service; and
- iii. All documents prepared for the purpose of those decisions, must be taken into account in any feasibility study conducted to determine the financial and other implications of appointing a service provider for the performance of that service.

*[MATR, Section 14]*

#### **10.10 Transfer Of Municipal Assets To Service Providers Appointed Through Competitive Bidding**

- a) If a service provider is appointed for the performance of a Municipal service referred in section 10.7 (a) and 10.8 (a) of this policy or for the performance of a commercial service referred to in section 10.7 (b) and 10.8 (b) of this policy, the Municipality may, as may be agreed with the service provider and subject to section 14(1) of the Act, transfer to that service provider all immovable property, including subsidiary assets, essential to the performance of that service.
- b) Capital and subsidiary assets that may be transferred in terms of section 10.10 (a) of this policy as essential to the performance of the service referred to in that subsection may include land, property and buildings and other immovable structures used for or in connection with that service, irrespective of whether the land, property, buildings or other immovable structures are classified as investment property in the accounting records of the Municipality or Municipal entity.

*[MATR, Section 15]*

#### **10.11 Discharge Of Borrowings On Assets Transferred Or Disposed Of In Terms Of This Chapter**

- a) The proceeds received from the transfer or disposal of an asset in terms of this Chapter must be used to discharge any borrowing against the asset as at its redemption date, or another date as may be negotiated with the lender.
- b) Section 9.11 (a) of this policy may not be read as preventing a municipality from negotiating with the private sector party or organ of state to whom an asset is transferred in terms of this Chapter, to take over, as part of the compensation payable to the Municipality or entity, any borrowing the Municipality made against the asset.

*[MATR, Section 16]*

#### **10.12 Transfer Agreements**

- a) The Municipality may transfer assets approved for transfer to a private sector party or organ of state in terms of this Chapter, only by way of a written transfer agreement concluded between the transferring Municipality and the receiving private sector party or organ of state.
- b) A transfer agreement must set out the terms and conditions of the transfer, including, as a minimum:
  - i. A sufficient description of the immovable property being transferred in order to identify the asset;
  - ii. Particulars of any subsidiary assets that are transferred with the immovable property;
  - iii. Particulars of any liabilities transferred with the asset;
  - iv. The amount of compensation payable to the Municipality for the transfer of the asset or assets, and the terms and conditions of payment; and
  - v. The effective date from which the risk and accountability for the asset or assets is transferred to the receiving private sector party or organ of state.
- c) If immovable property is transferred following the selection through a competitive bidding process of a service provider for the performance of a Municipal service referred to in section 9.8 (a) of this policy or for the performance of a commercial service referred to in section 9.8 (a) of this policy, the transfer agreement referred to in section 9.12 (a) of this policy:
  - i. Must contain provision for:
    - Contract termination in the case of non- or underperformance;
    - Dispute resolution mechanisms to settle disputes between the parties; and
    - A periodic review of the agreement once every three years, in the case of an agreement for longer than three years; and
  - ii. May be incorporated into any service delivery agreement or procurement contract to be concluded with the service provider.

*[MATR, Section 17]*

#### **10.13 Access To Transfer Agreements**

- a) An agreement in terms of which the Municipality transfers a non-exempted immovable property in terms of this Chapter:
- i. Must be made available in its entirety to the council of the Municipality or the Council of the Municipality or the Municipal entity; and
  - ii. May not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

*[MATR, Section 18]*

## **11 EXEMPTED IMMOVABLE PROPERTY**

### **11.1 Circumstances In Which Transfer Of Municipal Immovable Property To Organs Of State Is Exempted From Sections 14 And 90**

Section 14(1) to (5) and section 90(1) to (5) of the MFMA does not apply if the Municipality transfers immovable property to an organ of state in any of the following circumstances:

- a) When transfer of immovable property emanates from a review by the Municipality of its service delivery mechanisms for the performance of a Municipal service in terms of Chapter 8 of the Municipal Systems Act and the Municipality appoints another organ of state as the preferred option for the performance of the service.
- b) When transfer of immovable property emanates from a reorganisation of powers and functions between the Municipality and its Municipal entity, including asset transfers contemplated in section 84 of the MFMA.
- c) When transfer of immovable property emanates from an assignment of any of the powers or functions of the Municipality to another organ of state by national legislation or in terms of a power contained in national legislation, including an assignment of powers or functions following:
  - i. An adjustment of the division of powers and functions between a District Municipality and Local Municipalities within the district in terms of section 85 of the Municipal Structures Act;
  - ii. An authorisation in terms of section 84(3) the Municipal Structures Act; or
  - iii. A re-demarcation of Municipal boundaries in terms of the Municipal Structures Act.
- d) When Municipal housing or land is transferred to a national or provincial organ of state for housing for the poor or in terms of a national or provincial housing policy.
- e) When transfer of immovable property to an organ of state is required or permitted in terms of national legislation and that legislation determines the conditions of the transfer.
- f) Any other circumstance not provided in paragraph (a) to (e), provided that:
  - i. The immovable property to be transferred is determined by resolution of the Council to be not needed for the provision of the minimum level of basic Municipal services and to be surplus to the requirements of the Municipality;
  - ii. And if the immovable property is to be transferred for less than fair market value, the Municipality takes into account:
    - Whether the immovable property may be required for the Municipality or a Municipal entity under the Municipality's sole or shared control at a later date;
    - The expected loss or gain that is expected to result from the proposed transfer;
    - The extent to which any compensation to be received in respect of the proposed transfer will result in a significant economic or financial cost or benefit to the Municipality;
    - The risks and rewards associated with the operation or control of the immovable property that is to be transferred in relation to the interests of the Municipality or Municipal entity;
    - The effect that the proposed transfer will have on the ability of the Municipality to raise long-term or short-term borrowings in the future;
    - Any limitations or conditions attached to the immovable property or the transfer of the asset, and the consequences of any potential non-compliance with those conditions;
    - The estimated cost of the proposed transfer;
    - The transfer of any reserve funds associated with the immovable property;
    - The interests of any affected organ of state, the Municipality's own strategic, legal and economic interests and the interests of the local Community; and

- Compliance with the legislative regime applicable to the proposed transfer.

[MATR, Section 20]

### **11.2 Circumstances In Which Transfer Of Municipal Immovable Property To Organs Of State Is Not Exempted From Sections 14 And 90**

Sections 14(1) to (5) and 90(1) to (5) of the MFMA and section 9 of this policy must be applied if the Municipality transfers immovable property to an organ of state when none of the circumstances mentioned in section 11.1 of this policy apply, including when the asset is transferred in the course of an ordinary commercial transaction between the Municipality and the organ of state

### **11.3 Municipal Decision-Making Processes For Transfer Of Exempted Immovable Property**

- a) If an exempted immovable property is to be transferred to an organ of state in connection with the performance of a Municipal service contemplated in section 11.1 (a) of this policy or a reorganisation of powers or functions contemplated in section 11.1 (b) of this policy:
  - i. All decisions relating to the transfer of the immovable property must be taken by the Municipality as an integral part of the broader decision-making process on the selection of a service provider for the performance of the Municipal service or on the reorganisation of powers or functions in terms of the legislation applicable to that process;
  - ii. Any document prepared by the Municipality for the purpose of conducting a public participation process to involve the Community in decision-making must include details of the proposed transfer of the immovable property; and
  - iii. The proposed transfer of the immovable property must be taken into account in any feasibility study conducted to determine the financial and other implications of the selection of a service provider for the performance of the Municipal service or of the reorganisation of powers or functions.
- b) If a feasibility study referred to in sub section (a)(iii) indicates that there will be a significant increase in the costs of the Municipality after the transfer of the immovable property to the organ of state, the Municipality or the Municipal entity must demonstrate:
  - i. How the costs can be minimised by considering the sharing of administrative, information technology or financial costs between the Municipality and the organ of state;
  - ii. How much revenue can be generated by the organ of state which will be available to the Municipality to offset any increased costs it will incur as a result of the transfer; and
  - iii. The extent to which the Municipality can rationalise its administrative, information technology and financial costs subsequent to the transfer.
- c) The Municipality transferring immovable property to an organ of state in the circumstances described in section 11.1 (a) of this policy must take all reasonable steps to ensure that the transfer will result in the continuation of the Municipal service concerned at least at the same or better level that would otherwise have been rendered by the transferring Municipality had it not transferred the asset.

[MATR, Section 22]

### **11.4 Identification Of Exempted Immovable Property To Be Transferred To Organs Of State**

Before transferring an exempted immovable property to an organ of state in any of the circumstances described in section 11.1 (a) of this policy the Municipality must:

- a) Properly identify the immovable property, including:
  - i. In the case of a transfer emanating from the circumstances referred to in section 11.1 (a) of this policy, all other assets needed for or directly related to, and staff associated with, the performance of the Municipal service concerned;
  - ii. In the case of a transfer emanating from the circumstances referred to in section 11.1 (b) or (c) of this Policy, all other assets needed for or directly related to, and staff associated with, the exercise of the power or function concerned; or
  - iii. In the case of a transfer emanating from the circumstances referred to in section 11.1 (d) or (e) of this policy, all other assets needed for or directly related to that immovable property.
- b) Distinguish that asset and staff from the other assets and staff of the Municipality or Municipal entity.

[MATR, Section 23]

### **11.5 Transfer Of Exempted Immovable Property Needed To Provide Minimum Level Of Basic Municipal Services**

If the Municipality transfers to an organ of state an exempted immovable property needed to provide the minimum level of basic

Municipal services, such transfer may only be effected on condition that:

- a) Ownership in the immovable property must immediately revert to the Municipality should the organ of state for any reason cease to render the service or is unable to render the service.
- b) The organ of state may not without the written approval of the Municipality or the Municipal entity:
  - i. Transfer the immovable property to another person;
  - ii. Dispose of the immovable property;
  - iii. Grant a right to another person to use, control or manage the immovable property; or
  - iv. Encumber the immovable property in any way.
- c) Before transferring an exempted immovable property needed to provide the minimum level of basic Municipal services, the Municipality must be satisfied that the organ of state to which the asset is to be transferred can demonstrate the ability to adequately maintain and safeguard the asset.
- d) The transfer agreement, service delivery or other agreement between the Municipality and the organ of state to whom the asset is to be transferred must reflect the conditions set out in section 11.5 (a) & (b) of this policy.
- e) If the organ of state replaces upgrades or improves the immovable property transferred to it, the conditions set out in section 11.5 (a) & (b) of this policy remain applicable to the new, upgraded or improved immovable property as if it were the original immovable property.
- f) This regulation does not apply to immovable property needed to provide the minimum level of basic Municipal services which is transferred to an organ of state in the circumstances referred to in section 11.1 (c) & (d) of this policy.

*[MATR, Section 14]*

#### **11.6 Transfer Of Exempted Immovable Property**

- a) If the Municipality appoints an organ of state as the service provider for the performance of a Municipal service as contemplated in section 11.1 (a) of this policy or if a power or function of the Municipality is assigned to an organ of state as contemplated in section 11.1 (c) of this policy, the Municipality must, as may be agreed with the organ of state, transfer to that organ of state all immovable property, including subsidiary assets, essential to the performance of that Municipal service or the exercise of that power or function.
- b) Capital and subsidiary assets that must be transferred in terms of section 11.6 (a) of this policy may include land, property and buildings and other immovable structures used for or in connection with that service, power or function, irrespective of whether the land, property and buildings or other immovable structures are classified as investment property in the accounting records of the Municipality or Municipal entity.

*[MATR, Section 25]*

#### **11.7 Transfer Of Borrowings**

- a) If the Municipality transfers an exempted immovable property to an organ of state, any borrowings or other amounts owing by the Municipality specifically associated with the asset being transferred, or with its acquisition, operation or maintenance, must also be transferred to the organ of state.
- b) If the transfer of an exempted immovable property by the Municipality to an organ of state emanates from the appointment of an organ of state as the service provider for the performance of a Municipal service as contemplated in section 11.1 (a) of this policy or the assignment of a power or function of the Municipality to an organ of state as contemplated in section 11.1 (c) of this policy any borrowings or other amounts owing by the Municipality specifically associated with the performance of that Municipal service or the exercise of that power or function, must also be transferred to the organ of state.
- c) In addition, a portion of the outstanding balance of general borrowings on capital expenditure by the Municipality which is attributable or associated with the immovable property being transferred or with the performance of the relevant Municipal service or with the exercise of the relevant power or function must also be transferred to the organ of state, in a ratio of total value of immovable property being transferred to the organ of state to total value of all immovable property of the Municipality or entity, as appears in the accounting records of the Municipality or entity.
- d) Section 11.7 (a), (b) & (c) of this policy applies only if:
  - i. The creditor to whom the amount is owed consents to the transfer to the organ of state of the amount owing; and
  - ii. Any legal, operational, administrative or other constraints do not prevent the transfer to the organ of state of the amount owing.

- e) If a borrowing or other amount owing is transferred to an organ of state in terms of section 11.7 (a), (b) & (c) of this policy applies only if, the organ of state:
- i. Replaces the Municipality as debtor in relation to the borrowing or amount owing; and
  - ii. Becomes liable for the borrowing or amount owing as fully and effectually as if it originally entered into the agreement with the creditor.
- f) If for any reason a borrowing or other amount owing referred to in section 11.7 (a), (b) & (c) of this policy applies only if is not transferred to the organ of state:
- i. The Municipality remains liable for the amount owing to the creditor; and
  - ii. The Municipality and the organ of state must enter into an agreement whereby the organ of state undertakes to compensate the Municipality for all payments made by it to the creditor in terms of paragraph (i).
- g) A borrowing or other amount owing referred to in section 11.7 (a), (b) & (c) of this policy must be identified and allocated to the organ of state on a reasonable basis.

*[MATR, Section 26]*

### **11.8 Compensation For Transfer Of Assets**

- a) The Municipality transferring an exempted immovable property and any subsidiary assets to an organ of state may receive compensation for the value of those assets, as may be agreed with the organ of state.
- b) The value of an asset must for purposes of section 11.8 (a) of this policy be determined in accordance with section 11.9 of this policy.

*[MATR, Section 28]*

### **11.9 Transfer Agreements**

- a) The Municipality may transfer assets and liabilities in terms of this Section to an organ of state only in accordance with a written transfer agreement concluded between the Municipality and the organ of state.
- b) A transfer agreement must:
- i. Set out the terms and conditions of the transfer, including, as a minimum:
    - A sufficient description of the immovable property being transferred in order to identify the asset;
    - Particulars of any subsidiary assets that are transferred with the immovable property;
    - Details of all staff that will be affected and the legislation in terms of which such staff will be transferred;
    - Particulars of any liabilities transferred with the asset;
    - The amount of any compensation payable to the Municipality for the transfer of the asset, and the terms and conditions of payment;
    - The effective date from which the risk and accountability for the asset or assets is transferred to the organ of state;
    - In instances in which the organ of state is required or chooses to use the billing, information technology or any other administrative structure of the Municipality in the operation of the asset, the terms and conditions of such usage together with the basis of compensation for such usage and the financial risk exposure to the Municipality;
    - Details of any staff of the Municipality that will be available to the organ of state on a temporary or defined basis in the operation of the asset, together with the basis of compensation for such staff and the financial risk exposure to the Municipality or entity;
    - Where the asset is to be used by both the Municipality and the organ of state, the basis of how the asset is to be shared as well as how the costs and benefits of the shared asset will be apportioned between parties;
    - The value of the asset determined in accordance with section 11.9 of this policy;
    - Appropriate evidence to support the valuation of the asset; and
    - Details of any encumbrances, rights and servitudes, applicable to the asset;
  - ii. State that the transfer is effected on the basis of the provisions of this section and that these provisions must for this purpose be regarded as forming part of the agreement; and

- iii. Be signed on behalf of the Municipality and the organ of state.
- c) If immovable property is transferred following the appointment of an organ of state as the service provider for the performance of a Municipal service contemplated in section 11.1 (a) of this policy, the transfer agreement referred to in section 11.10 (a) of this policy:
  - i. Must provide for:
    - Contract termination in the case of non- or underperformance, which must be linked to termination of any service delivery agreement entered into between the parties;
    - Dispute resolution mechanisms to settle disputes between the parties;
    - A periodic review of the agreement whenever the service delivery agreement to which it is linked is reviewed in terms of the Municipal Systems Act, but at least once every three years in the case of an agreement for longer than three years; and
    - Requirements for the organ of state to maintain and safeguard the asset for its intended purpose, taking into account the condition of the asset and its estimated remaining life at the date of transfer;
  - ii. May contain:
    - Limitations or restrictions on the use or subsequent transfer of the asset; and
    - Limitations and conditions by which an asset may be used for the provision of security over any borrowing of the organ of state; and
  - iii. May be incorporated into any service delivery agreement to be concluded with the organ of state as service provider.

[MATR, Section 30]

#### **11.10 Impact Of Asset Transfers On Financial Interests Of Transferring Municipalities And Municipal Entities**

- a) Before entering into a transfer agreement in terms of section 11.10 of this policy, the Municipality must consider the effect that the transfer of an asset will have on:
  - i. Its credit rating and ability to raise long-term or short-term funds in the future; and
  - ii. Its financial position and cash flow.
- b) Section 11.11 (a) of this policy does not apply if the asset is transferred to an organ of state in the circumstances referred to in section 11.1 (c), (d) or (e) of this policy.

#### **11.11 Due Diligence**

- a) Before entering into a transfer agreement in terms of section 11.10 of this policy the organ of state to whom immovable property is to be transferred must undertake and document a due diligence review on the asset and any liabilities transferred to it.
- b) The results of the due diligence must be taken into account in any decision to transfer immovable property in terms of this Chapter.

### **12 RIGHTS TO USE, CONTROL OR MANAGE IMMOVABLE PROPERTY (LEASES)**

#### **12.1 General Provisions**

- a) The granting by the Municipality of a right to use, control or manage immovable property must for the purposes of this policy be dealt with in terms of section 10 and 11 of this policy as if such granting of a right is a transfer within the meaning of that section, if the right:
  - i. Is granted for an indefinite or undetermined period;
  - ii. Is granted for a period which exceeds:
    - The useful life of the immovable property; or
    - The economic usefulness of the immovable property and which would require the asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period for which the right is granted; or
  - iii. Confers on the person to whom the right is granted:
    - An option to buy or acquire ownership in the immovable property; or
    - The power to use, control or manage the immovable property as if that person is the beneficial (but not legal) owner of

the asset.

[MATR, Section 33]

### **12.2 Granting Of Rights To Use, Control Or Manage Municipal Immovable Property**

- a) The Municipality may grant a right to use, control or manage immovable property only after:
  - i. The Accounting Officer has in terms of section 12.3 of this policy conducted a public participation process regarding the proposed granting of the right; and
  - ii. The Municipal Council has approved in principle that the right may be granted.
- b) Sub section (a) must be complied with only if:
  - i. The immovable property in respect of which the proposed right is to be granted has a value in excess of R10 million; and
  - ii. A long term right is proposed to be granted in respect of the immovable property.
- c) Only the Municipal Council may authorise the public participation process referred to in sub section (a).
- d) A request to the Municipal Council for authorisation of a public participation process must be accompanied by an information statement stating:
  - i. The reasons for the proposal to grant a long term right to use, control or manage the relevant immovable property;
  - ii. Any expected benefits to the Municipality that may result from the granting of the right;
  - iii. Any expected proceeds to be received by the Municipality from the granting of the right; and
  - iv. Any expected gain or loss that will be realised or incurred by the Municipality arising from the granting of the right.
- e) The Municipal Council may delegate to the Accounting Officer its approval power referred to in sub section (b) excluding the power to grant long term rights to use, control or manage immovable property of a value in excess of R10 million.

[MATR, Section 34]

### **12.3 Public Participation Process For Granting Long Term Rights To Municipal Immovable Property With Value In Excess Of R10 Million**

If the Municipal Council has in terms of section 12 (2)(c) of this policy authorised the Accounting Officer to conduct a public participation process in connection with any proposed granting of a long term right to use, control or manage immovable property with a value in excess of R10 million, the Accounting Officer must at least 60 days before the meeting of the Municipal Council at which the decision referred to in section 12.2 (a)(ii) of this policy is to be considered:

- a) In accordance with section 21A of the Municipal Systems Act:
  - i. Make public the proposal to grant the relevant right together with the information statement referred to in section 12.2 (d) of this policy; and
  - ii. Invite the local Community and other interested persons to submit to the Municipality comments or representations in respect of the proposed granting of the right.
- b) Solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the matter.

[MATR, Section 35]

### **12.4 Consideration Of Proposals To Grant Rights To Use, Control Or Manage Municipal Immovable Property**

The Municipal Council must, when considering in terms of section 12.2 (a)(ii) of this policy approval for any proposed granting of a right to use, control or manage immovable property, take into account:

- a) Whether the immovable property may be required for the Municipality's own use during the period for which the right is to be granted;
- b) The extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the immovable property that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the Municipality;
- c) The risks and rewards associated with the use, control or management of the immovable property in relation to the Municipality's interests;

- d) Any comments or representations on the proposed granting of the right received from the local Community and other interested persons;
- e) Any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant Provincial Treasury;
- f) The interests of any affected organ of state, the Municipality's own strategic, legal and economic interests and the interests of the local Community; and
- g) Compliance with the legislative regime applicable to the proposed granting of the right.

*[MATR, Section 36]*

### **12.5 Conditional Approval Of Rights To Municipal Immovable Property**

An approval in principle in terms of section 12.2 (a)(ii) of this policy that a right to use, control or manage immovable property may be granted, subject to any conditions, including conditions specifying:

- a) The type of right that may be granted, the period for which it is to be granted and the way in which it is to be granted.
- b) The minimum compensation to be paid for the right.
- c) A framework within which direct negotiations for the granting of the right must be conducted, if granting of the right is subject to direct negotiations.

*[MATR, Section 40]*

### **12.6 Granting Of Rights To Use, Control Or Manage Municipal Immovable Property To Be In Accordance With Disposal Management System**

- a) If approval in principle has been given in terms of section 12.2 (a)(ii) of this policy that a right to use, control or manage immovable property may be granted, the relevant Municipality may grant the right only in accordance with the disposal management system of the Municipality or entity, irrespective of:
  - i. The value of the asset;
  - ii. The period for which the right is to be granted; or
  - iii. Whether the right is to be granted to a private sector party or organ of state.
- b) The disposal management system of a municipality does not apply to the granting of a right to use, control or manage immovable property if:
  - i. The Municipality:
    - Reviews in terms of Chapter 8 of the Municipal Systems Act its service delivery mechanisms for the performance of a Municipal service;
    - Selects through a competitive bidding process a private sector party or appoints an organ of state as the service provider for the performance of that Municipal service; and
    - Grants that service provider the right to use, control or manage that immovable property as an integral component of the performance of that Municipal service;
  - ii. The Municipality or Municipal entity:
    - Selects through a competitive bidding process a private sector party or organ of state as the service provider for the performance of a commercial service; and
    - Grants that service provider the right to use, control or manage that immovable property as an integral component of the performance of that commercial service;
  - iii. The right to use, control or manage that immovable property is granted as part of a reorganisation of powers or functions between the Municipality and its Municipal entity;
  - iv. The right to use, control or manage that immovable property is granted in circumstances referred to in section 110(2) of the MFMA; or
  - v. The right to use, control or manage that immovable property is granted to another organ of state in any other circumstance not stated in paragraph (i) to (iv) above, provided that the immovable property is determined by resolution of the Council of the Municipality or the Municipal entity to be surplus to the requirements of the Municipality or entity.

- c) The Municipality may negotiate directly with the private sector party or organ of state to whom the right to use, control or manage immovable property referred to in section 12.6 (b)(i), (ii), (iii), (iv) or (v) of this policy is to be granted.
- d) Before granting the right to use control or manage immovable property, the Municipality must be satisfied that the private sector party or organ of state to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset.

*[MATR, Section 41]*

#### **12.7 Preconditions For Granting Of Long Term Rights To Municipal Immovable Property As Part Of Selection Of Service Providers For Performance Of Municipal Or Commercial Services**

If the Municipality intends to grant to a private sector party or organ of state a long term right to use, control or manage immovable property with a value in excess of R10 million following the selection of that private sector party or organ of state as the service provider for the performance of a Municipal service referred to in section 12.6 (b)(i) of this policy or for the performance of a commercial service referred to in section 12.6 (b)(ii) of this policy:

- a) All assets needed or directly related to the performance of that service must be properly identified, to distinguish those assets from the other assets of the Municipality or Municipal entity;
- b) The decision required in terms of section 12.2 (a)(ii) of this policy relating to the granting of the right must be taken as an integral part of the broader decision making process on the selection of a service provider for the performance of that service; and
- c) All documents prepared for the purpose of that decision must be taken into account in any feasibility study conducted to determine the financial and other implications of appointing a service provider for the performance of that service.

*[MATR, Section 42]*

#### **12.8 Continuation Of Municipal Services**

If the Municipality grants a right to use, control or manage immovable property used for or in connection with a Municipal service, the Municipality or entity must take all reasonable steps to ensure that the granting of the right will result in the continuation of the service at least at the same or better level that would otherwise have been rendered by the municipality or entity had it not granted the right.

*[MATR, Section 43]*

#### **12.9 Granting Of Rights To Use, Control Or Manage Municipal Immovable Property Needed To Provide Minimum Level Of Basic Municipal Services**

If approval in principle has been given in terms of section 12.2 (a)(ii) of this policy that a right to use, control or manage immovable property may be granted and that asset is needed to provide the minimum level of basic Municipal services, such right may only be granted on condition that

- a) The granting of the right immediately lapses should the private sector party or organ of state to whom the right is granted, for any reason cease or become unable to render the service for which the immovable property is used; and
- b) The private sector party or organ of state to whom the right is granted may not without the written consent of the Municipality or the Municipal entity grant a right to another person to use, control or manage that immovable property.

*[MATR, Section 44]*

#### **12.10 Agreements Granting Rights To Use, Control Or Manage Municipal Immovable Property**

- a) The Municipality may grant a right to use, control or manage immovable property to a private sector party or organ of state only by way of a written agreement concluded between the municipality or entity and the private sector party or organ of state to whom the right is granted.
- b) An agreement referred to in section 12.10 (a) of this policy must:
  - i. Set out the terms and conditions on which the right is granted, including, as a minimum:
    - A sufficient description of the immovable property in respect of which the right is granted, in order to identify the asset;
    - Particulars of any subsidiary assets that are to be made available with the immovable property;
    - The period for which the right is granted;
    - The amount of compensation payable to the municipality for the granting of the right, and the terms and conditions of payment;

- Requirements for the private sector party or organ of state to whom the right is granted to maintain and safeguard the asset for its intended purpose, taking into account the condition of the asset and its estimated remaining life at the date of granting of the right;
  - Where the asset is to be used by the Municipality and the public sector party or organ of state to whom the right is granted, the basis of how the asset is to be shared as well as how the costs and benefits of the shared asset will be apportioned between the parties;
  - The extent to which the public sector party or organ of state to whom the right is granted will be required to make improvements or enhancements to the asset, and the terms and conditions regulating such improvements or enhancements;
  - A statement to the effect that the risk and accountability for the asset is transferred to the public sector party or organ of state to whom the right is granted;
  - The effective date from which the risk and accountability for the asset is transferred; and
  - A clause disallowing the private sector party or organ of state to whom the right is granted from ceding or subcontracting the right to another person; and
- ii. Be signed on behalf of the Municipality and the private sector party or organ of state to whom the right is granted.
- c) If a long term right to immovable property with a value in excess of R10 million is granted following the selection of a service provider for the performance of a Municipal service referred to in section 12.6 (b)(i) of this policy or for the performance of a commercial service referred to in section 12.6 (b)(i) of this policy, the agreement referred to in section 11.10 (a) of this policy:
- i. Must contain provision for:
- Contract termination in the case of non- or underperformance;
  - Dispute resolution mechanisms to settle disputes between the parties; and
  - A periodic review of the agreement once every three years, in the case of an agreement for longer than three years; and
- ii. May be incorporated into any service delivery agreement or procurement contract to be concluded with the service provider.

*[MATR, Section 45]*

### **12.11 Access To Agreements Granting Rights To Use, Control Or Manage Municipal Immovable Property**

An agreement granting a right to use, control or manage immovable property to a private sector party or organ of state:

- a) Must be made available in its entirety to the Council of the Municipality or the relevant Municipal entity; and
- b) May not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

*[MATR, Section 46]*

## **13 TRANSFER OF MUNICIPAL LAND AND HOUSING TO THE POOR**

### **13.1 General Provisions**

- a) Whenever the plight of the poor shall be a consideration in any decision to be taken in respect of the acquisition, disposal or letting of immovable property, regard shall be given to:
- i. The extent to which the needs of the poor are or have been addressed;
- ii. The potential loss or benefit the poor can suffer or gain through the decision concerned; and
- iii. The financial resources available to address the needs of the poor.
- b) The following principles has to be applied when transferring immovable property to the poor at prices below the market value of the properties:
- i. Properties of the same class shall be disposed of at the same price;
- ii. The availability of the properties shall be made public in accordance with the provisions of section 21A of the Local Government: Municipal Systems Act, 2000;
- iii. The properties shall, to the extent reasonably possible, be allocated in accordance with the order in which applications for such housing were received and priority shall be given to families and parents with children; and

- iv. The disposal of such housing by the recipient shall be restricted so as to prevent speculation and defeating the object of such preferential treatment, unless otherwise required in terms of any other law that may be applicable. (Section 13(2) of the MATR)
- c) All transfers must be fair, equitable, transparent, competitive and consistent with the SCM Policy.

### 13.2 Process Of Transfer And Disposal Of Immovable Assets To The Poor

Transfer of immovable assets to the poor must be done following the same processes as for non-exempted assets. Sections 10.1, 10.4, 10.5, 10.6, 10.7, 10.8, 10.12, and 10.13 of this policy apply to the transfer of immovable assets to the poor.

### 13.3 Compensation For Transfer Of Immovable Assets To The Poor

The following table should be used in determining the compensation to be paid by the poor:

*(The fair market value or proposed amount, whichever the lowest, must be used in determining the compensation)*

Category	Income Category (per annum)	Proposed Amount
1	R0.00 to R4 000.00	R2 000.00
2	R4 001.00 to R8 000.00	R10 000.00
3	R8 001.00 to R12 000.00	R13 500.00
4	R12 001.00 to R16 000.00	R15 000.00
4	R16 001.00 and above	Market Value, section 10 of this policy applies.

## 14 DISCRETIONARY CONDITIONS

### 14.1 Conditions Of sale

- a) The following general conditions apply in the event where immovable asset is sold / alienated:
  - i. 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;
  - ii. Compliance with all statutory requirements shall apply to an applicant who shall be responsible to meet such statutory requirements;
  - iii. 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;
  - iv. Where applicable and possible, a portion of immovable asset which is sold to an adjacent owner such portion shall be re-zoned, closed and consolidated with the applicant's asset;
  - v. When an immovable asset is sold, development must commence within five years 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;
  - vi. 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. Furthermore, Council reserves the right to impose such conditions as deemed necessary, without limiting its rights to liquidated damages and reversionary clauses;
  - vii. A reversionary clause shall be applicable to immovable asset transactions sold;
  - viii. A reversionary clause shall be included in all agreements prohibiting the owner of the land to dispose thereof, or to dispose of the company, unless the land is fully developed in terms of the condition of sale or Council agrees to such a disposal.
  - ix. The purchase price for land that is not financially viable such as unnamed lanes, streets, odd parcels will be alienated as determined by council from time to time;
  - x. The immovable asset may only be used for the purpose as approved by Council and purposes regularized by town planning schemes;

- xi. Where an immovable property is alienated to a natural person, that person may transfer such an asset to a legal entity wholly owned by him / her;
- xii. All sale agreements shall be finalized and concluded 90 days after notification of Council's decision, failure to comply thereto shall render the approval as null and void. A suspensive condition clause shall be applicable to all transactions which are subject to the approval of rezoning, sub-division, consolidation, etc.; and
- xiii. No application to be processed unless applicant has confirmed in writing that it will bear all costs where applicable, e.g. legal, survey, re-zoning subdivision, consolidations, advertisements, relocation or provision of services, and a deposit as per prescribed rate to cover incidental costs have been paid.

## 14.2 Conditions Of Lease

- a) The following general conditions shall be applicable in the event where Council's immovable asset is let:
  - i. No lease application shall be processed unless an applicant has confirmed in writing that he or she 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;
  - ii. The under-mentioned deposits and/or adequate / equivalent security / guarantee shall be applicable to leases where the rental is based on market value:
    - A deposit equal to three months rental for commercial transactions; and
    - A deposit equal to one month's rental for residential and social services transactions;
  - iii. No immovable asset shall be sub-let, ceded or assigned without the prior approval of Council;
  - iv. An owner of fixed immovable asset who leases an adjoining municipal immovable asset 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;
  - v. Rentals shall escalate annually at a percentage or preferably a percentage of property rates increase as approved by Council annually;
  - vi. The lessee shall be liable for payment of rates and service charges in terms of the Property Rates and the Credit Control and Debt Collection policies of the Municipality;
  - vii. The letting of lanes, public open spaces, road reserves and garden extensions shall be subject to the following:
    - Closing off/securing, if required by the Council, shall be to its satisfaction;
    - Costs for the relocation or installation of services shall be for the account of the lessee'; and
    - Securing of servitudes;
  - viii. Lessees shall indemnify Council against any possible claims arising from the lease or use of the immovable asset;
  - ix. Where land is leased, development must commence within five 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 suspense 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;
  - x. Lease periods may be on a short term (1-3 years), medium term (1-11 years) or long-term (1-30 years) basis;
    - short term (1-3 years) – the approval of this type of lease is delegated to the Accounting Office
    - medium term (1-11 years) or long-term (1-30 years) – only council in a public meeting (open to public) can approve this type of lease
  - xi. The asset may only be used for the purpose for which it was let and purposes regularized by town planning schemes / zoning regulation;
  - xii. Once an applicant has met all requirements the lease agreement shall be finalized and concluded within two months from date of Council's official request. Failure to comply within two 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;
  - xiii. Officials from Council shall at all reasonable times be entitled to enter / inspect the immovable asset; and
  - xiv. 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.

#### 14.2.1 Lease Periods Not Exceeding 12 Months

- a) The letting of immovable assets for periods not exceeding 12 months without an option to renew:
- i. Where applicable general conditions, shall apply; and
  - ii. Immovable assets let for short term periods, i.e. 14 days for circuses, church or cultural events, concerts etc, shall be subject to the following:
    - Where applicable, applicant to provide or arrange with Council at its cost for services, i.e. refuse, water, electricity, ablution facilities;
    - Applicant shall return immovable asset in its original condition;
    - Rental as per prescribed tariff;
    - Applicant shall indemnify Council against any claims against Council; and
    - Applicant shall undertake in writing to compensate Council for any damages caused to Council asset which may arise from any circumstances whatsoever.

#### 14.2.2 Short-term lease (1 – 3 years)

- a. The letting of immovable assets for periods not exceeding 3 years with an option to renew:
- I. Where applicable general conditions, shall apply; and
  - II. Immovable assets let for short term periods, i.e. land, building, etc. shall be subject to the following:
    - Where applicable, applicant to provide or arrange with Council at its cost for services, i.e. refuse, water, electricity, ablution facilities;
    - Applicant shall return immovable asset in its original condition;
    - Rental should be **charged at 1% of the property value with minimum of R1000**, or market related Value
    - Applicant shall indemnify Council against any claims against Council; and
    - Applicant shall undertake in writing to compensate Council for any damages caused to Council asset which may arise from any circumstances whatsoever
    - The approval of the lease is delegated to the accounting officer

#### 14.2.3 Medium to long term lease

- a. **The letting of immovable assets for periods exceeding 3 years:**
- I. **Where applicable general conditions, shall apply; and**
  - II. **Immovable assets let for medium to longer term periods, i.e. land, building, etc. shall be subject to the following:**
    - **Where applicable, applicant to provide or arrange with Council at its cost for services, i.e. refuse, water, electricity, ablution facilities;**
    - **Applicant shall return immovable asset in its original condition;**
    - **Rental should be charged at market related Value**
    - **Applicant shall indemnify Council against any claims against Council; and**
    - **Applicant shall undertake in writing to compensate Council for any damages caused to Council asset which may arise from any circumstances whatsoever**
    - **The approval of the lease is subject to councils approval on a meeting opened to the public**

## 15 VALUATION OF ASSETS

### 15.1 Valuation Of Assets

- a) The value of immovable property or any subsidiary assets transferred to an organ of state in terms of this Chapter must be determined in accordance with the accounting standards that the Municipality is required by legislation to apply in preparing its annual financial statements.
- b) In the absence of sufficient guidance in those accounting standards regarding the valuation of assets, the fair market value of the asset must be applied.
- c) The value of liabilities transferred to an organ of state in terms of section 11.7 of this policy must be determined in accordance with the accounting standards that the Municipality is required by legislation to apply in preparing its annual financial statements.
- d) In the absence of sufficient guidance in those accounting standards regarding the valuation of liabilities attached to those assets, any of the following valuation methods must be applied:
  - i. The settlement value of the liability, which is the amount that will be paid or the value of the service that will be provided to settle the liability when due; or
  - ii. The net present value of the liability, after discounting future settlement values to present values.

### 15.2 Valuation Of Council Property Land And Buildings

All land and buildings recorded in the Municipality's fixed asset register shall be revalued with the adoption by the Municipality of each new valuation roll (or, if the land and buildings concerned fall within the boundary of another Municipality, with the adoption by such Municipality of each new valuation roll). The Municipality may, however, at any time when it regards it necessary for purposes of the management of its land and buildings have all or any of its land and buildings revalued.

### 15.3 Determination Of Selling Price

Council shall appoint a Professional Valuer who will determine the fair market value of all the identified properties, and this person must be an independent Professional Valuer or Professional associated Valuer registered in terms of the Property Professional Act, 2000 (Act 47 of 2000). Council owned property shall be disposed at a market related selling price including VAT, as determined by the valuer unless the Council resolved otherwise. Comments of the relevant departments of the Municipality including the Town Planning Section on the future development potential of the Council owned property should be taken into consideration by the property section in determining a market related selling price.

### 15.4 Valuation Requirements

- a) All valuations are done in terms of the following principles:
  - i. Title deed information:
    - Full description of the property;
    - Size;
    - Registered owner/s;
    - Purchase date;
    - Purchase price;
    - Date of registration;
    - Existing bonds;
    - Limitations (including servitudes, conditions and any endorsements or caveats);
    - Minerals rights;
    - Local government information;
    - Town Planning Information – (including zonings, rights and other use restrictions);
    - Municipal Valuations; and
    - Rates & Taxes payable;
  - ii. Physical description:

- Physical address;
  - Situation / Locality;
  - Nature of surrounding neighbourhood;
  - Historical background;
  - Availability of services;
  - Availability of amenities;
  - Features of the property – (including dimensions, frontage, contours, accommodation, finishes and other value forming attributes); and
  - Leases (terms);
- iii. Market identification:
- Market Conditions – (including going prices, rentals, affordability, financing restrictions, etc.);
  - Highest and Best Use (over-capitalized);
  - Potential target Market;
  - Comparable properties;
  - Applications of comparable;
  - Method of valuation;
  - Market research on comparables;
  - Rejection of data; and
  - Assumptions and final Adjustments – (the fewer the difference, the more reliable the comparable);
- iv. Conclusion:
- Certificate of Market Value;
  - Certificate of Market Rental;
  - Compensation in the case of expropriation; and
  - Any financial loss or inconvenience, in the case of servitude.

## 16 DISPOSAL COMMITTEE

- a) The Disposal Management Committee appointed as per the SCM Policy and Regulations, primary function in terms of this policy shall be:
- i. To advise the Municipal Manager on all matters relating to the acquisition, maintenance or disposal of land and other immovable property;
  - ii. Advise the committees of Council on the acquisition, maintenance and disposal of land and other immovable property and make recommendations to council on such matters in accordance with the Integrated Development Plan (IDP), the SDF and the Asset Management Strategy;
  - iii. Ensure that a Register of Land and Other Immovable property is developed and regularly updated;
  - iv. Ensure that a monitoring and evaluation system is established to realize the policy principles, objectives and set targets of this policy;
  - v. Conduct surveys of current undeveloped land to ascertain noncompliance to contracts' obligations and ensure that in instances of noncompliance with such contractual obligations, such land reverts back to the Municipality; and
  - vi. Ensure compliance with this policy and relevant legislation.

**See charter annexure.**

**17 APPEALS, COMPLAINTS, DISPUTES, ENQUIRIES OR OBJECTIONS**

- a) In the event of an appeal raised in relation to a decision made in terms of this policy the provisions of section 62 of the Municipal Systems Act, 2000 will apply.
- b) In the event of an objection, complaint, dispute or enquiry raised in relation to a decision made during the SCM process, the provisions of SCM TR 49 and 50 will apply.

## ANNEXURE A

### 1. Disposal Committee charter:

The Disposal Committee appointed as per the SCM Policy and Regulations, for the purposes of this Policy may use the following charter as a guideline:

#### a) Introduction

The Committee aims to assist the Council and the Accounting Officer in the sale and letting of various categories of municipal properties in order to make available economic opportunities in the Municipality for local investors.

#### b) Background

The Charter is intended to guide the Committee when performing its functions; to engender proper corporate governance in terms of the King II and III report on Corporate Governance; the MFMA, MSA, MATR and to clarify the roles and responsibilities of the Committee and the management of the Municipality.

#### c) Authority

- The Committee has authority to assess and analyse any property disposal or letting related matters of the Municipality, and may require members of management or others to attend meetings and to provide advice or information in order to perform its duties.
- The Charter sets out the specific responsibilities delegated by the Accounting Officer (in the effective discharge of the Accounting Officers' responsibilities) to the Committee and provide support for the manner in which the Committee will operate.
- The Committee is authorised to seek any information it requires from any employee of the Municipality in order to perform its duties.

#### d) Purpose

##### i. The Committee will:

- Review and advice on the Municipal Asset Management Plan;
- Consider and recommend the categorisation and method of disposal or letting of Municipal properties;
- Consider applications for the disposal or letting of municipal properties;
- Consider comments received regarding the disposal or letting of Municipal properties; and
- Manage the disposal or letting method of Municipal properties as endorsed by Council. Negotiate relevant disposal or letting agreements.

#### e) Objectives

- ##### i. The primary objectives of the Committee are to assist the Council and the Accounting Officer with the effective discharge of their responsibilities, in particular, with regard to the following:
- Maintaining and sustaining the Municipality's Immovable Asset Management Plan and Strategy;
  - Provide leadership in the disposal and letting of Municipal properties;

- Continuous evaluation of the immovable asset management performance of the Municipality;
- Review and ensure the continuous development and maintenance of the Land Disposal Policy;
- Ensuring that adequate land disposal and letting advice is provided to the Municipality;
- Satisfy the MFMA prescribed reporting requirements; and
- Review the Committee Charter.

f) Duties of the Committee

i. The duties of the Committee are to:

- Consider and recommend the Municipality's Immovable Asset Management Plan and Strategy;
- Consider and recommend the disposal or letting of Municipal properties;
- Consider and recommend the categories of Municipal properties and advise on best method of disposal or letting;
- Monitor and report on immovable asset management performance of the Municipality;
- Monitor the implementation and co-ordination of the Land Disposal Policy; and
- Review, at least annually, the Land Disposal Policy against the background of amongst others, findings by other assurance providers and recommend any proposed changes (if necessary) for approval by the AO and Council.

g) Composition of the Disposal Committee

- The Members of the Committee will be appointed in writing by the AO;
- The Chairperson of the Committee is the Director Planning and Economic Development;
- The AO may instruct another senior manager at a level not lower than 3 to fulfil the role of Chairperson. Such instruction must be in writing;
- In the absence of the designated Chairperson the Chief Financial Officer will perform that role;
- Each member of the Committee must be issued with a copy of the approved Committee Charter; and
- The Committee comprises of the following members appointed by the Accounting Officer and subject to his prerogative to recall and / change the appointees:
  - Director: Planning and Economic Development (Chairperson)
  - Chief Financial Officer (Deputy Chairperson)
  - Manager Risk; (Secretary)
  - Manager LED
  - Manager: Office of the Municipal Manager;
  - Manager Assets;
  - Manager Human Settlement;
  - Manager Planning;

- Manager Legal and
- Manager Axillary Services

h) Committee planning

- The Municipal Asset Management Plan and Strategy needs to identify the Municipal properties available for disposal or letting; and
- Annually the Committee must consider and prioritise those properties that will yield the most economic and socio-economic benefit if disposed, developed or leased and include such planning in the Municipal IDP.

i) Committee meetings

- The number of meetings is determined by the Chairperson so as to allow the Committee to fulfil its obligations;
- The number of meetings shall not be less than four meetings per annum (the Committee should meet at least quarterly);
- The Chairperson is required to call a meeting of the Committee if requested to do so, in writing, by any member;
- All meetings shall be conducted subject to an agenda to which members have been given the opportunity to contribute;
- The quorum for a meeting shall be a minimum of 50% +1 Committee members;
- Minutes of the meeting will be maintained and kept for record purposes in accordance with the official file plan;
- Minutes shall be ratified by the Committee and signed by the Chairperson and be made available to the Council on a quarterly basis; and
- Submissions in preparation for a Committee meeting shall be distributed to the members at least five working days before the meeting.

2. **Meetings:**

- The Chairperson will chair the meetings of the Disposal Committee and represent the committee in all senior management meetings and council meetings.
- The Chairperson should confirm key decisions and where consensus cannot be achieved have the casting vote in determining the final decision.
- The chairperson shall act as arbitrator between the stakeholders and parties involved with the Disposal Committee, always considering the best interest of the municipality.
- The Chairperson shall regularly update the municipal council with regard to progress, key challenge.

3. **Amendment, Modification or Variation:**

The appointment of members may be amended, varied or modified in writing after consultation between the involved parties.