



# **Land Disposal Policy and Property Lease Disposal Policy**

**JULY 2022**

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## **1. INTRODUCTION**

The Land Acquisition and Disposal Policy of the Mandeni Municipality, reflects the methodology and procedure for the sale and letting of various types of properties. In order to make available economic opportunities in the Municipal area for local investors, the Municipality will in all Land Disposal and Property Lease Policy and Letting matters, consider giving preference to local investors, NGOs, CBOs or FBOs and local residents.

## **2. KEY PRINCIPLES UNDERPINNING LAND POLICY**

The Mandeni Municipality, subject to relevant legislation, reserves the right to decide in its sole discretion, to dispose or let Council owned property and its decision in this regard, is final.

A set of principles and values, which underpin land acquisition and disposal, is critical in guiding the process of policy formulation as well as its application.

**The land acquisition and disposal policy should, aim to:-**

- a) Redress past land ownership patterns to reflect the population demographic distributions of the Mandeni Municipality
- b) Ensure an equitable, flexible and transparent process that enables efficient performance of appropriate land transaction to serve the diverse need of the Municipality's Business and Communities.
- c) To act in support of development of land, the local economy, provision of infrastructure and housing; land use through Town Planning Schemes.
- d) Stimulate economic development.
- e) Act in support of:-
  - i. Development of land, the local economy, provision of infrastructure and/or housing;
  - ii. Land use - Town planning scheme/ land information system;
  - iii. The interest of the public and plight of the poor;
  - iv. Rates systems;
  - v. Local Agenda 21 principles of sustainable development and environmental preservation.
- f) Stimulate Economic Development. To fulfil this aim, the Policy should:-
  - i. Be equitable.
  - ii. Be flexible (always in a process of development).
  - iii. Enable efficient transactions to reduce bureaucracy.
  - iv. Ensure appropriate land transactions.
  - v. Serve the needs of the municipality's Departments and Communities.
  - vi. Ensure compliance with all Environmental Legislation.

## **3. KEY VALUES AND ISSUES**

- a) The evolving Land Disposal and Property Lease Policy Framework for this Municipality must be informed by the legal and constitutional context within which Municipalities are operating. This is critical since the Constitution is the supreme law of the land.
- b) The Municipality has a core responsibility to acquire and avail land and buildings, in the first instance, for use by its Business Units for purposes of developing and maintaining Municipal infrastructure, promoting service delivery and for facilitating social and economic development, spatial integration and environmental sustainability. Immovable assets not required for these purposes are by implication surplus to Municipal needs although future requirements of the Municipality must be acknowledged and hence the need to hold property in reserve.
- c) The Municipality has a responsibility to acquire, manage, develop and release its real estate holdings and rights on behalf of its residents and ratepayers. The key consideration is that the best interests of the Municipality (and thus their residents) should be paramount in all real estate transactions that the Municipality enters into. This demands that in all transactions the Municipality enters into, there should be maximum benefit to it, its operational requirements and the broader community.
- d) Certain interventions are regularly necessary in land transactions pursued by the Municipality as compared to those of the private property market. As the private market is solely concerned with maximizing capital gain, as against the collective role of the Municipality, in acting in the best interest of its citizens, it follows that the Municipality will not singularly follow the processes and values of that market.
- e) Land and buildings affect the Municipality's entire organization and straddles all Units and Committees of the Municipality. Therefore, the Land Disposal and Property Lease Policy Framework must act in support of principles and values such as economic development, social, economic and environmental sustainability, land use, housing, social and community infrastructure, physical infrastructure, biodiversity protection, culture and recreation.
- f) Market forces will always be the point of departure in any land or property transaction and this must therefore be recognized and acknowledged.
- g) A Policy in respect of immovable property includes any right, interest or servitude therein or there over and must also take account of other legislation, policies and practices relating to land use, health, environment (both natural and built), safety etc.
- h) The Municipality in subscribing to affirmative action principles, must incorporate these principles in its' Land Disposal and Property Lease Policy Framework, to redress practices in the past.

#### 4. **PRINCIPLES**

Following on from the values and issues as articulated above, it is possible to isolate the following principles as cardinal to the whole process of developing and applying new Policy:-

- a) **Efficiency** – reduce unnecessary bureaucratic red tape; timeous decision-making proper record systems; economies of scale.
- b) **Effectiveness** – quality of decisions; public benefit; cost-benefit; analysis decision risk.
- c) **Sustainability** – continuity; financial viability; durability; affordability.

- d) **Democracy** – consultation; participation; accountability; transparency; accessibility.
- e) **Co-operation and Co-ordination** – with municipal departments, inter-governmental and extra-governmental.
- f) **Redress** – levelling the playing field.
- g) **Equity** – fairness; justice; equality.
- h) **Flexible and Dynamic** – less rigidity; adapting and changing with times.
- i) **Developmental** – external; internal.
- j) **Informed** – identification of environmental impacts and of cumulative effects; provision of site specific data.

## 5. DEFINITIONS

**Bank Charter Housing** - Means affordable bondable housing subsidised by the Department of **Department of Human Settlements** and aimed at households falling in the R3 501,00 to R7 000,00 income category.

**B-BBEE Enterprise** - Means an enterprise whose B-BBEE score in terms of a sector scorecard, which has been issued as a code of practice or in terms of the DTI generic scorecard, is greater than or equal to 30% and has been verified by an accredited Verification Agency.

**B-BBEE scorecard** - Means a scorecard for the measurement of Broad-Based Black Economic Empowerment for a particular enterprise, as set out in the Charter.

**Biodiversity** - All aspects of biological diversity, especially species richness, ecosystem complexity and genetic variation.

**Black people** – *means people who are citizens of the Republic of South Africa by birth or descent: or who became citizens of the Republic of South Africa by naturalization (i) before 27 April 1994; or (ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization before that date.*

**Broad-Based Black Economic Empowerment**- Means the economic empowerment of all black people including women, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include but are not limited to:-

- i. Increasing the number of black people that manage, own and control enterprises and productive assets with particular reference to preferential population groups.
- ii. Facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises.
- iii. Human resource and skills development.
- iv. Achieving equitable representation in all occupational categories and levels in the workforce.
- v. Preferential procurement **from enterprise that are owned or managed by black people**
- vi. Investment in enterprises that are owned or managed by black people.

**Business Co-operatives** - Means a co-operative trading company established through the Co-operative Development Unit of the Department of Trade and Industry and incorporated under the Co-operatives Act No. 91 of 1981.

**Capital Assets**- Includes immovable assets i.e. Land, buildings and installations that cannot be moved without changing the identity thereof.

**Council** - Means the full council.

**Disposal** - Means the sale, exchange, donation, or letting of Municipal land (including the allocation of Municipal land free of charge, for a period of time), the conclusion of any form of land availability agreement in respect of immovable property with any person and the registration of any real or personal right in respect of Municipal land, including servitudes.

**Enablement** - Means the preparation of land for development and includes securing development rights, rehabilitating land, removing redundant structures or installations and installing infrastructures.

**Enterprise** - Means a person or persons conducting a business, trade or profession in the Republic of South Africa.

**Exchange** - Means the simultaneous acquisition and disposal of immovable property or any right in respect of immovable property in terms of an agreement between the Municipality and any other party or parties where the compensation payable by the parties to each other, are offset and only the difference, if any, is payable to the appropriate party.

**Fronting** - Refers to any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments. Fronting structures generally claim a higher BEE status than the actual substantive benefits flowing to black beneficiaries.

**Joint Venture** - Means a venture which is formed ad-hoc, for a specific project, in which two or more parties share the obligations, risks and rewards.

**Local Area** - Means the area under the jurisdiction of the Mandeni Municipality.

**Local Agenda 21 (LA 21)** - An action programme developed to assist Local Authorities to achieve sustainable development, drafted at the United Nations Earth Summit held in Rio de Janeiro in 1992, and ratified by the leaders of 179 countries. The principles of LA 21 are, multi-sectoral approach, integration of social, economic and environmental issues, concern for the future, equity, justice and accountability, recognizing and working within ecological limits, developing partnerships with civil society and linking local issues with global impacts.

**Priority Previously Disadvantaged Group** – *Refers to black people as defined in the amended BBBEE Act (46 of 2013) and the DTI definition contained in the DTI codes of good practice”.*

**Public Private Partnerships** - Means a Public Private Agreement between the Municipality and a Private Partner as described in Section 120 of the Municipal Finance Management Act, No. 56 of 2003.

**Real Rights** - Means the rights to traverse privately owned property with servitudes which are notarially registered in the Deeds Office or contained in Title Deed Conditions.

**Social Housing** - Means a rental or co-operative housing option for low income persons at a level of scale and built form which requires institutionalised management and which is provided by social housing institutions or other delivery agents in approved projects in designated restructuring zones with the benefit of public funding as contemplated in this Act.

**Viable property** - Immovable property that can be developed and functioned as a separate entity and can be separately registered in the office of the Registrar of Deeds.

**Non-viable property** - Immovable property that owing to urban planning or physical constraints or extent, cannot be developed on its own or function as a separate entity and only becomes functional if alienated or leased to an adjoining owner for usage in conjunction with the said owners property.

**MFMA**- The Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

## 6. REQUIREMENTS OF THE MFMA

### Section 14

*"(1) A Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services,*

*(2) A Municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in sub-section (1), but only after the Municipal Council, in a meeting open to the public -*

*(a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and*

*(b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.*

*(3) A decision by a Municipal Council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that asset has been sold, transferred or otherwise disposed of.*

*(4) A Municipal Council may delegate to the Accounting Officer of the Municipality, its powers to make the determinations referred, to in sub sections 2(a) and (b) in respect of movable capital assets below a value determined by the Council.*

*(5) Any transfer of ownership of a capital asset in terms of sub-section (2) or (4) must be fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy which the Municipality must have and maintain in terms of Section 111.*

*(6) This section does not apply to the transfer of a capital asset to another Municipality or to a Municipal entity or to a National or Provincial organ of State in circumstances and in respect of categories of assets approved by the National Treasury, provided that - such transfers are in accordance with a prescribed framework. "*

## 7. SUPPLY CHAIN MANAGEMENT POLICY

Black people, who are South African citizens, will be afforded a preference in terms of the Mandeni Municipality's Supply Chain Management Policy, in respect of the disposal of viable immovable

properties as embodied in Section 9 (2) of the Constitution of the Republic of South Africa Act 108 of 1996.

## **7.1. DISPOSAL MANAGEMENT**

**The disposal of capital assets must be dealt with in accordance with the provisions of the Municipal Finance Management Act, 56 of 2003.**

The Accounting Officer must establish a Land Disposal and Property Lease Policy Committee to deal with the disposal of assets. All items for disposal must be authorised in terms of the MFMA.

## **7.2. ADJUDICATION OF DISPOSALS**

**Adjudication of disposals will be conducted in terms of the Preferential Procurement Policy Framework Act (PPPFA) and the Broad Based Black Economic Empowerment Act (BBBEE) BBBEE Act (No.46 of 2013).**

## **8. APPLICATION**

This Land Disposal and Property Lease Policy Framework must be applied to all Municipal owned properties and must be complied with in every case where the disposal and letting of immovable assets is dealt with. All applications must be referred in the first instance, to the Disposal Committee established in terms of Section 7 of this Disposal Policy.

## **9. METHODS OF DISPOSAL AND LETTING**

The disposal and letting of immovable property owned by the Mandeni Municipality will be conducted in accordance with one of the following described methods:

### **9.1. SALE OR LETTING BY TENDER / PROPOSAL CALL**

All sales of immovable assets should be at current Market Value except when the public interest or the plight of the poor demands otherwise. All transactions are subject to the tendering and adjudication guidelines, contained in this policy. Other than in exceptional circumstances as prescribed in Item 11 of this Policy, all sales of immovable assets should be on open Tender. All adjacent neighbouring residents or stakeholders to the property up for sale must be notified in writing during the process of sale of immovable property.

Municipal owned immovable property should not be sold by Auction unless the sale on the open market by other methods has not yielded a satisfactory result.

### **9.2. DONATION "GRATIS" TRANSFER**

The donation ("gratis" transfer) of an immovable asset to other organs of State or to CBO's, NGO's, NPO's, and Civil Society Organizations, in furtherance of Social and Environmental Objectives may be



considered by the Council. For these CBO's, NGO's, NPO's, and Civil Society Organizations to be considered they should comply with all registration formalities (registration documentation from CIPRO), tax laws proof of Tax registration and current Tax Clearance Certificate), and be able to provide a track record of existence and financial stability (comprehensive profile listing all successful previous and current projects, as well as at least three years audited financial statements).

### **9.3. LETTING**

The Letting of immovable assets, should be at a market related rental except when the economic and/or community value or the plight of the poor demands otherwise. Section 14 (2)(b) requires the Municipal Council-to have regard to a fair market value of assets which includes rentals.

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 withif1 the requirements of Section 14 of the MFMA.

### **9.4. EXCHANGE**

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 asset and instead of a purchase price being agreed, the parties exchange ownership of their respective immovable assets.

Should one immovable asset 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.

### **9.5. PUBLIC PRIVATE PARTNERSHIP**

In the context of disposals, a PPP is a transaction between Mandeni Municipality and a private party.

A PPP agreement may only be entered following the compliance with Section 120 of the MFMA.

## **10. TRANSFER BETWEEN SPHERES OF GOVERNMENT**

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.

Transfer of immovable assets contemplated above shall be subject to a clearly defined reversionary clause, providing for a reversion of ownership to the Mandeni Municipality, free of charge, in the event that the immovable asset is no longer to be used for the specified socio-economic purpose or owner occupation by a government department concerned.

## **11. UNSOLICITED BIDS**

**11.1 A Supply Chain Management Policy must state that the Municipality or Municipal entity is in terms of Section 113 of the MFMA not obliged to consider unsolicited bids received outside a normal bidding process. If a Municipality or Municipal entity decides in terms of Section 113(2) of the MFMA to consider an unsolicited bid, it may do so only if:-**

- a) The product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
- b) The product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the Municipality or Municipal entity.
- c) The reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.

If a Municipality or Municipal entity decides to consider an unsolicited bid that complies with sub-regulation (2), the Municipality or Municipal entity must make its decision public in accordance with Section 21A of the Municipal Systems Act, together with :-

- a) Its reasons as to why the bid should not be open to other competitors.
- b) An explanation of the potential benefits for the Municipality or Municipal entity were it to accept the unsolicited bid; and
- c) An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

Once the Municipality or Municipal entity has received written comments pursuant to sub-regulation (3), it must submit such comments, including any responses from the unsolicited bidder, to the National Treasury and the relevant Provincial Treasury for comments.

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.

A meeting of the Adjudication Committee to consider an unsolicited bid must be open to the public.

When considering the matter, the Adjudication Committee must take into account:-

- a. Any comments submitted by the Public; and
- b) Any written comments and recommendations of the National Treasury or the relevant Provincial Treasury.
  - 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.
  - 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 or Municipal entity to the bid may be entered or signed within 30 days of the submission.
  - The requirements of the contents of 11.1 above, does not apply to unsolicited bids which are submitted in terms of Section 11.2 below.

## 11.2. Special Circumstances

The Mandeni 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:-

- a) 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.
- b) 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.
- c) 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.
- d) Vacant industrial land.
- e) Vacant land for the development of lower income housing in the categories of low cost, social and bank charter housing.
- f) The sale of Municipal land, involving Black Economic Empowerment in partnership with foreign investors.
- g) Municipal land for Community projects,
- h) Land for worship purposes.
- i) Municipal property for educational purposes other than private schools.
- j) Municipal property for sale and hire to registered business co-operatives established in terms of the Department of Economic Affairs, Environment and Tourism Initiative in Kwa-Zulu Natal.
- k) 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:-
  - i. Current market value.
  - ii. Replacement cost.
  - iii. Income streams / cash flow analysis.
  - iv. Economic life expectancy.
  - v. BBBEE considerations.
  - vi. Strategic importance,
  - vii. Possible future use.
  - viii. Current lease clauses.
- l) Airport land for aviation purposes.
- m) Previously disadvantaged areas identified by the Municipality, where local economy is stagnant and remedial steps will require special treatment.

## **12. OFFICIALS AND POLITICAL OFFICE BEARERS**

12.1. Officials in the employ of the Mandeni Municipality shall have the right to make an offer for acquisition of immovable assets being disposed of by the Mandeni Municipality.

12.2. A political office-bearer or an official in the employ of the Mandeni Municipality who, in his / her personal capacity, has a direct or indirect interest in an immovable asset 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.

12.3. An official in the employ of the Mandeni Municipality shall not act as a member of a panel responsible for assessing and adjudicating tenders relating to the 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.

## **13. DISPOSAL OF RIGHTS IN IMMOVABLE ASSETS**

13.1 A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Mandeni 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.

13.2. If the proposed servitude will result in the immovable asset being negatively affected, including the impairment of the ability to productively enjoy, utilize, permanently dispose or otherwise deal with the immovable asset, then such servitude must not be granted.

13.3. 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.

## **14. KEY PRINCIPLES AND GUIDELINES PERTAINING TO THE LETTING BY COUNCIL OF IMMOVABLE PROPERTY**

14.1. Council is permitted to let immovable property in its ownership, on a long term or short term basis, by way of Private Treaty or Public Tender.

14.2. Where possible, Councils immovable property should be managed as a sustainable resource by leveraging environmental, social and economic returns on such immovable property while Council retains ownership thereof.

14.3. Council is permitted to let immovable property for development purposes aligned with its strategic objectives.

14.4. Unless otherwise provided for in this Policy, vacant or improved immovable property shall be let at a fair Market related rental.

14.5. All applications to lease immovable property must be considered in accordance with this Policy Framework and other applicable legislation.

14.6. Unless otherwise provided herein, the letting of viable immovable property by Council, shall be affected by means of a process of public competition.

14.7. For the purpose of this Policy, viable immovable property is deemed to be property that can be developed and function as a separate entity on its own and can be registered as separate entity by the Registrar of Deeds.

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

14.9. Black people, who are South African citizens, will be afforded preference in terms of the Mandeni Municipality Supply Chain Management Policy in respect of the letting of viable immovable properties as embodied in Section 9 (2) of the Constitution of the Republic of South Africa (Act No. 108 of 1996).

14.10. In order to achieve the objective of broad based economic empowerment, Council reserves the right to limit the number of leases per tenderer in the course of a tender process.

14.11. Council reserves the right to entertain unsolicited bids for the lease of viable immovable property for development purposes, with the proviso that it abides by Council's Strategic Objectives and more specifically that it favours the promotion of Black Economic Empowerment, Entrepreneurship and Community upliftment.

14.12. Non-viable immovable property may be let by Private Treaty to adjoining owners. Unless otherwise provided herein, such immovable property shall be let at a fair market related value, determined by a Professional Valuer. Leases for gardening purposes shall be at the tariff rental as approved by Council from time to time. No permanent structures shall be permitted on immovable property let for gardening purposes except a perimeter enclosure acceptable Council.

14.13. Immovable property may be let by Private Treaty to social care users. Rentals shall be determined in terms of the tariff rentals as approved by Council from time to time and in such cases, the Lessee shall accept responsibility for the maintenance of the immovable property and any improvements thereon.

14.14. Viable immovable property may be let by Private Treaty in exceptional cases where the Council is of the opinion that Public competition would not serve a useful purpose or that it is in the interest of the Community and the Council. Council's reasons in each instance must be recorded as part of its Resolution.

14.15. Sport facilities and other public amenities may be let by Private Treaty to Sports Boards, Sports Federations and other similar bodies in accordance with Council's Policies on sports facilities and public amenities. Community based bodies and non-professional sporting bodies shall be charged the tariff rentals as approved by Council from time to time. Professional sports bodies and bodies operating for profit shall be charged a fair market related rental based on the market value of the property to be leased.

14.16. Private Treaty letting of immovable property for outdoor seating to adjoining restaurant owners is permitted subject to statutory requirements being complied with and a Professional Valuer determining the rental charged.

14.17. Lease Contracts with existing tenants of immovable properties may be renegotiated where Council is of the opinion that public competition would not serve a useful purpose or that renewal is aligned with Council's strategic objectives and in the interest of the Community, subject to such renewal being advertised calling for public comment as described in Item 12 of this Policy. The existing tenant must give notice of the intention to renegotiate the lease at least six months before the date of termination.

14.18. Improvements to Council's immovable property established by the Lessee and which Council wishes to retain shall revert to Council, free of compensation, at expiration or termination of the Lease. Where such improvements are not required by the Council, these shall be removed by the Lessee to the satisfaction of Council and all costs shall be borne by the Lessee.

14.19. An owner of fixed immovable property who leases Council immovable property may be substituted by a successor-in-title as deemed necessary on the same terms and conditions and / or additional terms and conditions.

14.20. No application shall be processed unless the prescribed application fee as per tariff has been paid nor shall any proposed lease be advertised unless the applicant has confirmed, in writing, that it will bear all costs involved in such transaction including, but not limited to, Legal, Survey, Re-zoning, Sub-division, Consolidations, Advertisement, Relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

**14.21 When an immovable asset is sold, development must commence within twelve (12) months 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;**

**14.22 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;**

**14.23 The Council reserves the right to take donated land back (Government and NGOs, FBOs) from the receiving entity at no costs should the beneficiary fail to develop it within twelve (12) months from which the date of approval of donation or date of signing the Donation Agreement and such donated priority shall not be transferred to 3rd party.**

14.24 All transacted properties shall not be transferred/ sold to the 3rd party prior to the development or upgrading of such property.

## **15. KEY PRINCIPLES AND GUIDELINES PERTAINING TO THE DISPOSAL AND LETTING OF IMMOVABLE PROPERTY FOR SOCIAL CARE USES.**

15.1. 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:-

- a) 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.
- b) Child care facility insofar as it contributes to the functioning of a multi-use childcare facility and is operated on a non-profit basis.
- c) Retirement villages for that portion of the building or facility available to general public use at subsidised / nominal prices.
- d) Schools or centres-utilised as homes for the handicapped and disabled persons.
- e) Non-profit rehabilitation centres.
- f) Homes / centres for indigent, battered or destitute persons.
- g) Organisations for the homeless and elderly.
- h) Youth activity centres.
- i) Facilities for the accommodation, care and burial of animals.
- j) Cemeteries, NPO funeral parlours and non-profit crematoria.

15.2. Organizations must be listed in schedule 9 of the Income Tax Act.

15.3. 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.

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

### **15.5. (i) Allocation of places of worship:-**

- a) Place of worship will be offered by means of competitive bidding.
- b) Bidders will be subject to a screening process that will take into account of, inter alia, the needs of the community, nature of the organisation and the ability to discharge intentions.
- c) Will be subject to a predetermined price that is market related, or as may be determined by Council,
- d) Will be subject to development clauses to ensure discharge intentions

### **(ii) The following factors shall be considered relevant in the selection and allocation of immovable property to places of worship:-**

- a) The minimum size of 400 congregation or membership shall be confirmed.
- b) Availability of finance to acquire the site and develop same within two years plus possible extension.
- c) Whether or not such a denomination is already represented in the area.
- d) Whether or not welfare type facilities will be provided in addition to religious facilities.
- e) Whether or not the congregation is drawn from area in which a site is being applied for.
- f) The church shall be affiliated with Church Council.

## **16. PROVINCIAL NOTICE NO. 1369 OF 2006**

The **MEC for Co-operative Governance and Traditional Affairs** published a Notice on 17 August 2006, in terms of which all Disposals of Properties must be referred to his office, for comment. The Notice reads as follows:-

*"NOTICE IN TERMS OF SECTION 105(2) OF 'THE LOCAL GOVERNMENT: **Municipal Systems Act, (Act No. 32 of 2000) as amended:** SUBMISSION OF INFORMATION BY MUNICIPALITIES PRIOR TO THE DISPOSAL OF IMMOVABLE PROPERTY*

#### **SCHEDULE**

**In terms of Section 105(2) of the Local Government: Municipal Systems Act, (Act No. 32 of 2000) as amended**, read with Section 155(6) and 155(7) of the Constitution of the Republic of South Africa 1996, the information required in this Schedule, must be submitted by all Municipalities within the Province of KwaZulu-Natal, to the Member of the Executive Council for the Province of KwaZulu-Natal responsible for local government ("the MEC"), in respect of any intended sale of immovable property in terms of the provisions of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and the Municipal Supply Chain Management Regulations, made in terms of the Local Government: Municipal Finance Management Act, 2003, and published in Government Notice R.868 on 30 May 2005.

1. Prior to the implementation of any decision to dispose of immovable property, each Municipality must submit the following information to the, MEC for his comment:
  - a. The nature of the immovable property to be disposed of;
  - b. The market related value of the said immovable property;
  - c. The reasons for the disposal of the said immovable property; and
  - d. The anticipated cost to the Municipality in disposing of the said immovable property."

## **17. APPLICATION OF THIS POLICY**

This Policy will be effective from the (date of adoption) and continues until its objectives have been achieved or until terminated by council for reasons which it may state.

## **18. AMENDMENTS**

This Policy shall be endorsed by the Council to ensure that it is binding and everybody complies and may be reviewed on an annual basis or, as and when required.

## **19. 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:

### **19.1 Introduction**

*MM Initial*



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.

## **19.2 Background**

The Charter is intended to guide the Committee when performing its functions.

## **19.3 Authority**

- I. 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.
- II. 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
- III. The Committee is authorised to seek any information it requires from any employee of the Municipality in order to perform its duties.

## **19.4 Purpose**

The Committee will:

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

## **19.5 Objectives**

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:

- i. Provide leadership in the disposal and letting of Municipal properties;
- iii. Continuous evaluation of the immovable asset management performance of the Municipality;
- iv. Review and ensure the continuous development and maintenance of the Land Disposal Policy;
- v. Ensuring that adequate land disposal and letting advice is provided to the Municipality;

- vii. Satisfy the MFMA prescribed reporting requirements; and
- viii. Review the Committee Charter.

## **19.6 Duties of the Committee**

### **19.6.1 *The duties of the committee are to:***

Consider and recommend the Municipality's Immovable Asset Management Plan and Strategy;

- I. Consider and recommend the disposal or letting of Municipal properties;
- II. Consider and recommend the categories of Municipal properties and advise on best method of disposal or letting;
- III. Monitor and report on immovable asset management performance of the Municipality;
- IV. Monitor the implementation and co-ordination of the Land Disposal Policy; and
- V. 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.

### **19.7 *Composition of the Land Disposal Committee***

- I. The Members of the Committee will be appointed in writing by the AO;
- II. The Chairperson of the Committee is the Director EDPHS;
- III. The AO may instruct another senior manager to fulfil the role of Chairperson. Such instruction must be in writing;
- IV. In the absence of the designated Chairperson the Chief Financial Officer will perform that role;
- V. 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:

- I. Director: Economic Development, Planning and Human Settlement
- II. Chief Financial Officer
- III. Director: Community Service and Public Safety
- IV. Risk Officer;
- V. Manager Human Settlement and Building Control Officer
- VI. Manager IDP and Planning
- VII. Manager Local Economic Development
- VIII. Manager Supply Chain Management
- IX. Manager Revenue

## **19.8 Committee secretariat**

The Secretariat of the Land Disposal Committee is the Assistant Manager: Administrative Support in the Department of Corporate Services

## 19.9 Committee planning

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.

## 19.10 Committee meetings

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

This Policy has been adopted by Council at their meeting held on: **28 JULY 2022** as per Council Resolution C08

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**Mr SG KHUZWAYO**

***MM Initial***