

# **POLICY 016/2015 RAADSBELEID**

**ONDERWERP:** PROPERTY DISPOSAL POLICY

**VERWYSING:** 7.1.B & 15.1.B

**BESLUIT NR:** 21/05.1/2015 (SRV)

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## **Table of contents**

1. **INTERPRETATION**
2. **SHORT TITLE AND COMMENCEMENT**
3. **IMPLEMENTATION AND REVIEW PROCESS**
4. **APPLICATION OF THE POLICY**
5. **PURPOSE, CONSIDERATIONS AND OBJECTIVES**
6. **LEGISLATIVE FRAMEWORK**
7. **POWERS OF THE COUNCIL**
8. **MUNICIPAL PROPERTY VALUATIONS**
9. **PUBLIC PARTICIPATION PROCESS**
10. **DISPOSAL AND LETTING PROCESS**
11. **CATEGORIES OF PROPERTY AND THE METHODS OF DISPOSAL / LETTING**
12. **ALTERNATE DISPOSAL/LETTING PROCEDURE**
13. **METHODS OF DISPOSAL / LETTING**
14. **ALTERNATE DISPOSAL/LETTING PROCEDURE**
15. **SOCIAL HOUSING**
16. **SOCIAL CARE PORTFOLIO**

## **Annexure A**

1. **General Provisions for Disposal/Letting agreements**
2. **General Conditions of Disposal**
3. **Specific Conditions for Disposal**
4. **General Conditions of Letting**
5. **Specific Conditions for Letting**
6. **Conditions for Compensation and Fair Market Value**

## **Annexure B**

### **Extracts of Regulations of the MATR**

#### **1. INTERPRETATION**

1.1. In this policy the following words bear the meanings assigned to them below:

- 1.1.1 "**BBBEE Act**" means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended;
- 1.1.2 "**BEE Owned Company**" shall have the meaning given to the term "**BEE Owned Company**" as set out in Schedule 1 to the Codes of Good Practice;
- 1.1.3 "**BEE Controlled Company**" shall have the meaning given to the term "**BEE Controlled Company**" as set out in Schedule 1 to the Codes of Good Practice;

1.1.4 "**Black Company**" means:

1.1.4.1 a juristic person which is both a BEE Owned Company and a BEE Controlled Company, and "**Black Companies**" shall mean two or more of such juristic persons; or

1.1.4.2 a trust which qualifies as both a Broad-Based Share Ownership Scheme' and a Broad Based Benefit Scheme for purposes of the Codes of Good Practice;

1.1.5 "**Black People**" means:

1.1.5.1 black people as defined in Schedule 1 to the Codes of Good Practice and, (to the extent that such definition is not wide enough to include PDIs) PDIs; and/or

1.1.5.2 Chinese People; and/or

1.1.5.3 Black Companies,

and "**Black Person**" shall, mutatis mutandis, have a corresponding meaning;

1.1.6 "**Broad-Based Black Economic Empowerment**" shall have the meaning assigned to it in the BBEE Act and for purpose of this Policy "**BBEE**" shall be ascribed a corresponding meaning;

1.1.7 "**Business Days**" means any day other than a Saturday, Sunday or officially recognised public holiday in South Africa;

1.1.8 "**Chinese People**" means persons of Chinese descent who may be regarded as black people for the purposes of the BEE Codes, as contemplated in the judgment by the High Court of South Africa (Transvaal Provincial Division) on 18 June 2008, in the matter between The Chinese Association of South Africa and Others v Minister of Labour and Others under Case No. 5925112007;

1.1.9 "**Codes of Good Practice**" means the Codes of Good Practice contemplated in section 9 of the BBEE Act, gazetted on 9 February 2007;

1.1.10 "**Constitution**" means the Constitution of the Republic of South Africa, 1996;

1.1.11 "**Core Property**" means Property that can be developed or be utilised on its own for any municipal function;

1.1.12 "**Council**" means the //Khara Hais Municipal Council;

1.1.13 "**Dispose**" or "**Disposal**" means, in relation to Property, the transfer of ownership in the Property as a result of, for example (without limitation): a sale; donation; exchange; or similar transaction;

1.1.14 "**Exempted Property**" means Property which is exempted by subsection 14(6) of the MFMA from the other provisions of that section;

1.1.15 "**High Value**" means that:

1.1.15.1 in respect of the **Disposal** of Property, the fair market value of the Property concerned exceeds any of the following amounts:

1.1.15.1.1 R50,000,00.00 (fifty million rand) or such higher amount as may be determined for purposes of and/or as may set out in paragraph (a) of the definition of "High Value" as contained in Chapter 1 of the MATR; or

1.1.15.1.2 (one) percent of the total value of the Municipality's capital assets, as determined from the then latest audited annual

financial statements of the Municipality, or such higher percentage as may be determined for purposes of and/or as may be set out in paragraph (b) of the definition of "High Value" as contained in Chapter 1 of the MATR; or

1.1.15.1.3 an amount determined by resolution of the Council which is less than the amounts set out in paragraph 0 or 0 above; or

1.1.15.1.2 in respect of the **Letting** of Property, the Property in which the proposed Property Right is to be granted has a value exceeding R10,000,000.00 (ten million Rand), and a Long Term Property Right has been granted in respect of the Property;

- 1.1.16 "**IDP**" means the Integrated Development Plan envisaged in section 25 of the Systems Act;
- 1.1.17 "**Income Tax Act**" means the Income Tax Act 58 of 1962, as amended or replaced from time to time;
- 1.1.18 "**Information Statement**" has the meaning ascribed thereto in paragraph 10.15 below;
- 1.1.19 "**Letting**" or to "**Let**" means, in relation to Property, the granting of a Property Right as a result of, for example (without limitation): a lease or the cession of a right in and to the Property;
- 1.1.20 "**Long Term**" means a period exceeding 3 (three) years;
- 1.1.21 "**Mandatory Information**" has the meaning ascribed thereto in paragraph **Error! Reference source not found.**;
- 1.1.22 "**MATR**" means the MFMA Municipal Asset Transfer Regulations, issued in terms of the MFMA and published in Government Gazette No. 31346 of 22 August 2008;
- 1.1.23 "**MBRR**" means the MFMA Municipal Budget and Reporting Regulations, issued in terms of the MFMA and published in Government Gazette No. 34141 of 17 April 2009;
- 1.1.24 "**MFMA**" means the Local Government: Municipal Finance Management Act 56 of 2003;
- 1.1.25 "**MSCMR**" means the MFMA Municipal Supply Chain Management Regulations, issued in terms of the MFMA and published in Government Gazette No. 27636 of 30 May 2005;
- 1.1.26 "**Municipality**" means the //Khara Hais Local Municipality;
- 1.1.27 "**Municipal Manager**" means the municipal manager or acting municipal manager of the Municipality appointed in accordance with the provisions of the Structures Act or his/her delegated person;
- 1.1.28 "**Non-Core Property**" means Property that, owing to urban planning, physical constraints or extent cannot be developed on its own or be used on its own for any municipal function and that can become functional only if developed or used in conjunction with the immovable property of an adjoining owner (other than the Municipality);
- 1.1.29 "**Non-Exempted Property**" means Property which is not exempted by subsection 14(6) of the MFMA from the other provisions of that section;
- 1.1.30 "**Policy**" means this Property Disposal policy;
- 1.1.31 "**PPFA**" means the Preferential Procurement Policy Framework Act 5 of 2000, including any regulations issued pursuant thereto from time to time;

1.1.32 "**Previously Disadvantaged Individuals**" or "**PDI**" means:

- 1.1.32.1 African, Coloured and Indian people who are citizens of the Republic of South Africa by birth or descent, or are citizens of the Republic of South Africa by naturalisation occurring before the commencement date of the Constitution of the Republic of South Africa of 1993 or occurring after the commencement date of the Constitution of the Republic of South Africa of 1993 but who without the apartheid policy would have qualified for naturalisation before then; or
- 1.1.32.2 to the extent that the ambit of the definition in paragraph 1.1.15.1 is not wide enough, a South African citizen, who due to apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa of 1993 or the Constitution of the Republic of South Africa of 1993; and / or who is a female; and / or who has a disability: provided that a person who obtained South African citizenship on or after the coming to effect of the Constitution of the Republic of South Africa of 1993, is deemed not to be a PDT;

1.1.33 "**Municipal Property**" means any immovable asset such as land, property or buildings owned by the Municipality and that can be sold;

1.1.34 "**Property By-Laws**" means:

- 1.1.34.1 any by-law enacted by the Municipality from time to time relating to the management and administration of any Property; and
- 1.1.34.2 any other applicable by-law enacted on or prior to the date on which the Constitution came into effect and which by-law, as a whole or in part, remains of force and effect subsequent to such date;

1.1.35 "**Property Right**" means, in relation to Property, a right to use, control or manage the Property for a determinable period without the loss of ownership of the Property by the Municipality, as contemplated by Chapter 4 of the MATR;

1.1.36 "**Property Transaction**" means a transaction between the Municipality and a third party whereby the Municipality either Disposes of or Lets Property;

1.1.37 "**SCM Policy**" means the supply chain management policy of the Municipality adopted as required by section 111 of the MFMA;

1.1.38 "**Social Care**" is defined as services provided by registered welfare, charitable, non-profit cultural and religious organisations registered in terms of Schedule 9 of the Income Tax Act and includes, but is not limited to, the following types of uses:

- 1.1.38.1 places of worship to the degree and for that portion of a facility being used for spiritual gathering by, and providing social welfare support to, worshippers and the broader community;
- 1.1.38.2 child care facilities insofar as they contribute to the functioning of a multi-use childcare facility and are operated on a non-profit basis;
- 1.1.38.3 retirement villages for that portion of the building or facility available to the general public to use at subsidised / nominal prices;
- 1.1.38.4 schools or centres, utilised as homes for handicapped and disabled persons;
- 1.1.38.5 non-profit rehabilitation centres;

- 1.1.38.6 homes/centres for indigent, battered or destitute persons;
- 1.1.38.7 organisations for the homeless and elderly;
- 1.1.38.8 youth activity centres;
- 1.1.38.9 facilities for the accommodation, care and burial of animals; and
- 1.1.38.10 cemeteries, non-profit funeral parlours and non-profit crematoria;

1.1.39 “**Social Housing**” shall have the meaning ascribed thereto in the Social Housing Act, namely: a rental or co-operative housing option for low to medium income households 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 [the Social Housing Act], including (without limitation) instances where housing on Municipal land for the poor is Disposed of or Let to the beneficiaries of that housing;

1.1.40 “**Social Housing Act**” means the Social Housing Act 16 of 2008, as amended or replaced from time to time;

1.1.41 “**Structures Act**” means the Local Government: Structures Act 117 of 1998; and

1.1.42 “**Systems Act**” means the Local Government: Municipal Systems Act 32 of 2000.

## 2. **SHORT TITLE AND COMMENCEMENT**

This Policy is called the Property Disposal Policy and will come into effect on the date of adoption by Council (such date to be indicated on the cover page).

## 3. **IMPLEMENTATION AND REVIEW PROCESS**

3.1. This Policy will come into effect on the date upon which the Council resolves to adopt this Policy (as reflected on the cover page).

3.2. This Policy must be reviewed as and when required by the Council.

## 4. **APPLICATION OF THE POLICY**

4.1. The MFMA and the MATR apply to capital assets, which are defined in the MATR to include immovable assets and certain movable assets. This Policy applies only to capital assets which fall within the definition of Property. The Council must comply with the Policy where it wishes to Dispose of or Let Property.

4.2. For the avoidance of doubt, public-private partnerships are not governed by this Policy, and may only be entered following the compliance with section 120 of the MFMA. The provisions of this Policy will therefore not apply to Disposals/Letting in the context of public-private partnerships.

## 5. **PURPOSE, CONSIDERATIONS AND OBJECTIVES**

5.1. The purpose of the Policy is to provide the Council and the Municipality with a framework for the Disposal or Letting of Property.

5.2. The Council must ensure that Property is dealt with in a manner that ensures the greatest possible benefit to the strategic objectives of the Municipality and the community it serves, at all times acting in the best interests of the Municipality and the community it serves.

5.3. Further, the Disposal or Letting of Property must be aligned with the Municipality’s Integrated Development Plan (“**IDP**”).

5.4. Council, the LDC and the Municipality, as the case may be, must reserve and manage Property for its own use and operational needs, for example, for purposes of municipal offices as well as for purposes of provision by the Municipality or by service providers appointed by the Municipality of municipal services such as water, sanitation, electricity and so forth.

- 5.5. Any Disposal or Letting should take into account that the Municipality has a core responsibility to acquire and avail Property in the first instance for its own use and purposes of developing and maintaining municipal infrastructure, promoting service delivery and for facilitating social and economic development, and spatial integration. Property unrelated to these responsibilities may by implication be surplus to the Municipality's requirements, although future requirements must be acknowledged and hence the need to hold Property in reserve.
- 5.6. In circumstances where Property is Disposed of, Council must be satisfied that it is the appropriate methodology and that reasonable economic and social return cannot be derived whilst ownership of the Property is retained by the Municipality.
- 5.7. This Policy supports the following objectives –
  - 5.7.1 the promotion of equality, social and economic development;
  - 5.7.2 promoting BBEE through property ownership, property development and use, as well as the equitable participation of Black Persons in the economy of the Republic of South Africa;
  - 5.7.3 the establishment of a framework to achieve:
    - 5.7.3.1.1 equitable participation by Black Persons in the Disposal; Letting; and/or development of Property; and
    - 5.7.3.1.2 a BBEE ownership target of not less than 40% (forty percent) in respect of each Property per category of Properties, other than a property falling within the categories of "authority" and "transport". "BBEE ownership target" means, subject to any other target set by either the National or Provincial Government in regard to the ownership of property in the Republic of South Africa or any region, the number of Properties per category of Property owned, managed or controlled by Black Persons or in respect of which a Property Rights has been granted to a Black Person expressed as a percentage in relation to the total number of Properties per category of Property;
  - 5.7.4 supporting economic development, environmental management and biodiversity protection; land use; housing, social and community infrastructure, physical planning and infrastructure; culture and recreation; to utilise, reserve and manage Property for broader Municipal purposes in the interests of the Municipality's local community;
  - 5.7.5 management of Property as a sustainable resource, where possible, by leveraging environmental, social and economic returns on such Property while retaining ownership thereof; and
  - 5.7.6 securing sound, sustainable and transparent management of the assets and liabilities of the Municipality and the handling of financial dealings.

## 6. **LEGISLATIVE FRAMEWORK**

- 6.1. The Municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Systems Act.
- 6.2. The Municipality has the executive and legislative authority in respect of the Systems Act and the Structures Act, and has the right to administer matters as provided for in the Constitution.
- 6.3. The Municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers, as provided for in terms of the Constitution and the Systems Act.

- 6.4. The need exists for the adoption of this Policy to govern the exercise of the aforesaid powers in relation to the Disposal or Letting of Property.
- 6.5. This Policy must be implemented with due regard to the legal framework applicable from time to time and which has a bearing on the Disposal or Letting by the Municipality of any Property, which framework currently includes (without limitation):
  - 6.5.1 the B-BBEE Act;
  - 6.5.2 the Constitution;
  - 6.5.3 the MATR (which governs the Disposal or Letting of capital assets by municipalities and municipal entities);
  - 6.5.4 the PPPFA (although not binding in respect of Disposals/Letting, the Municipality may have regard thereto as an example of 'best practice');
  - 6.5.5 the MFMA (which deals with the transfer and disposal of capital assets by municipalities and municipal entities);
  - 6.5.6 the MSCMR, read with the Municipality's SCM Policy;
  - 6.5.7 the Municipal Property Rates Act 6 of 2004 (which regulates the payment of rates and taxes of Municipal Property);
  - 6.5.8 the National Housing Act 107 of 1997, read with the National Housing Code, 2009 (and in particular ensuring that the application of this Policy is aligned with the goals and objectives contemplated by such legislation and code); and
  - 6.5.9 applicable Property By-laws.

## 7. **POWERS OF THE COUNCIL**

This paragraph sets out the powers the Council has in respect of the Disposal or Letting process.

### Authorising the public participation process

- 7.1. Only the Council may authorise a public participation process.

### 'In principle' Approval

- 7.2. After the completion of the public participation process (where required), a meeting of the Council is to be called at which the Council:

- 7.2.1 in relation to a Disposal, is to make the section 14(2) determination i.e. **in a meeting open to the public:**

- 7.2.1.1 decide, on reasonable grounds, that the Property is not needed to provide the minimum level of basic municipal services; and
- 7.2.1.2 consider the fair market value of the Property and the economic and community value to be received in exchange for the Property,

- 7.2.2 and as a consequence further determine whether to approve the Disposal of the Property (as contemplated in regulation 5(1)(b)(ii) of the MATR); or in relation to Letting, is to determine whether to approve the granting of a Property Right (as contemplated in regulation 34(1)(b) of the MATR).

- 7.3. If as a consequence of these determinations the Council decides to authorise the Disposal or Letting of the Property 'in principle', then the Property can be Disposed of or Let (as the case may be).
- 7.4. The Council may attach conditions to its 'in-principle' approval (see paragraph 10.24 below), which must be adhered to when Disposing of or Letting the Property.
- 7.5. The Council reserves its right to maintain oversight over the implementation of this Policy.

## 8. MUNICIPAL PROPERTY VALUATIONS

- 8.1. Where the Municipality intends on Disposing or Letting Property, a public participation process will be required if the Property is regarded as High Value.
- 8.2. Further, if the Municipality intends on Disposing of a number of Properties during a financial year, and the total value of the Properties to be Disposed of exceeds 5% (five percent) of the total value of all the assets of the Municipality (relying on the latest available audited annual financial statements), a public participation process will also be required.
- 8.3. Where the Municipal Manager commissions a valuation, an independent registered valuator shall be appointed to determine a market related value, which will serve as a floor/reserved price.
- 8.4. Valuations will lapse after 12 (twelve) months from the date such valuation has been declared in writing and received by the Municipal Manager on behalf of the Municipality, unless:
  - 8.4.1 the Council determines otherwise; or
  - 8.4.2 the Property in question has since been Disposed of; or
  - 8.4.3 the Municipality is legally unable to revalue the Property for purposes of the Disposal thereof; or
  - 8.4.4 a valid and binding agreement exists between the Municipality and any third party in terms of which the Municipality has agreed to different terms regarding the date of expiration or lapsing of the valuation.

## 9. PUBLIC PARTICIPATION PROCESS

- 9.1. In the event that a public participation process is required in respect of the Disposal or Letting of Property, the Council shall authorise the Municipal Manager to conduct a public participation process.
- 9.2. The Municipal Manager must schedule the public meeting, and in preparation for the public participation process the Municipal Manager must, at least 60 (sixty) days before the meeting at which the Council is to make a decision on whether to approve of the Disposal or Letting 'in principle' (see regulation 5(1)(b) or 34(1)(b) of the MATR, as the case may be):
  - 9.2.1 in accordance with section 21A of the Systems Act, make public the proposal to Dispose of or Let the Property and invite the local community and other interested persons to submit to the Municipality comments or representations in respect of the proposed Disposal or Letting; and
  - 9.2.2 solicit the views and recommendations of the National Treasury and the Northern Cape provincial treasury on the proposed Disposal or Letting.
- 9.3. At the relevant date the Municipal Manager must conduct the public participation process.

## 10. DISPOSAL AND LETTING PROCESS

- 10.1. This paragraph sets out the general process to be followed when the Municipality Disposes of or Lets Property.
- 10.2. The Municipality shall as a general rule endeavour to retain ownership of Property in order to achieve the objectives set out in this Policy and to perform its Municipal functions.
- 10.3. It must be a condition of Disposal of any Property or part thereof to be developed and zoned for any purpose, including without limitation residential development, that such Property or part thereof will be developed and used subject to any applicable sustainable development initiatives set, adopted and/or implemented, from time to time, by the Council and/or the Municipality, it being recorded that as at the date of the approval of this Policy, a sustainable development initiative has been set and adopted by Council and is being implemented by the Municipality in accordance with the spatial development framework relevant to the Municipality.

### Step 1: Application and Initiation:

- 10.4. Any interested external party may initiate the process of Disposal or Letting by completing a written application form obtained from the Municipal Manager and submitting same to the Municipal Manager. Alternatively, an official of the Municipality acting in his/her official capacity may initiate the process of Disposal or Letting by submitting a memorandum to the Municipal Manager.
- 10.5. The Municipality shall be entitled (through the LDC), in its sole discretion and from time to time, to specify the types of Property Transactions in respect of which applications are permitted to be made to the Municipality and to impose application fees, charges, rates, tariffs, scales of fees or other charges relating to the Property Transaction (collectively "**the Charges**").
- 10.6. The Municipal Manager must acknowledge receipt of an application or memorandum within **10 (ten) Business Days** of receipt of such application.

### Step 2: Nature of the Disposal

- 10.7. Once the Municipal Manager has acknowledged receipt of an application or memorandum, it must commence the Disposal process by determining the nature of the Disposal. This comprises two parts, namely:
  - 10.8.
    - 10.7.1 whether the Property being transferred is Exempted Property, or Non-Exempted Property; and
    - 10.7.2 whether the transfer is part of the appointment of a service provider as contemplated in regulation 12(2) of the MATR.
- 10.9. In order to determine whether Property is Exempted Property, the Municipal Manager must apply the provisions of regulation 20 (read with regulation 21) of the MATR.
- 10.10. If it is Exempted Property, the Municipal Manager must adhere to Chapter 3 of the MATR in Disposing of the Property (and subsections 14(1) – (5) of the MFMA do not apply). This Policy does not apply to the Disposal/Letting of Exempted Property.
- 10.11. Where the Municipality has appointed a service provider by way of a competitive bidding process (as is contemplated in regulation 12(2) and 41(2) of the MATR (extracts which are attached hereto as **0** for ease of reference) respectively), steps 1 to 5 of this paragraph 10 must still be complied with. However, regulation 12(3)/41(3) of the MATR states that the Municipality may thereafter negotiate directly with the

selected service provider regarding the Disposal or Letting of Property. Refer to paragraphs 0 through 0 below for further details on the Disposal/Letting process once steps 1 to 5 have been complied with.

- 10.12. In relation to Social Housing, the application, initiation and Disposal/Letting process (including the selection of the method of Disposal/Letting) are to be handled by the Municipal Manager in terms of and subject to applicable National housing legislation, the applicable National Housing Code, and pursuant to this Policy. Refer to paragraph 15 below for further details on the Disposal/Letting process in respect of Social Housing.

### Step 3: Valuation of the Property

- 10.13. Once the nature of the Disposal has been determined, the next step is for the LDC to ascertain the value of the Property(ies) to be Disposed of or Let in order to determine whether a public participation process is required.
- 10.14. If a valuation has not been conducted in respect of the Property to be Disposed of or Let, the Municipal Manager must obtain a valuation before proceeding with the process.

### Step 4: Preparation of an Item to Council

- 10.15. Upon receipt of an application or memorandum initiating a Disposal, the Municipal Manager must compile an item to Council for consideration.
- 10.16. The Disposal Report shall contain, amongst others, an information statement comprising the following information:
  - 10.15.1 the value of the Property and how that value was determined;
  - 10.15.2 the reasons for the proposed Disposal or Letting of the Property;
  - 10.15.3 the expected benefits if any, that may result from the Disposal or Letting of the Property;
  - 10.15.4 any expected gain or loss that will be realised or incurred by the Municipality arising from the Disposal or Letting;
  - 10.15.5 a recommendation regarding the method of Disposal or Letting with due regard to the zoning or categorisation of the Property concerned (see paragraph 11 below); and
  - 10.15.6 the nature and extent of the benefits and/or opportunities to be realised by or which are envisaged for Black People, particularly those in the local community which the Municipality serves.
- 10.17. The application to purchase property (including all relevant supporting documentation) must be circulated for comment between all relevant departments within the Municipality (such as Housing, Town Planning, Civil Engineering).
- 10.18. The Municipal Manager must consolidate all the comments received, if any, from all the relevant departments and finalise the item.

## Step 5: Authorisation from the Council

- 10.19. As is discussed in paragraph 7 above, the Council is required to:
- 10.18.1 authorise a public participation process (where applicable), and
  - 10.18.2 determine whether to provide its 'in principle' approval of the Disposal or Letting of Property.
- 10.20. If a public participation process is required, a Council meeting is to be called for the Council to authorise the public participation process. In the event that the Council authorises the Municipal Manager to conduct a public participation process, he/she shall follow the process required by the applicable legislation (see paragraph 9 above in this regard). Where the Disposal is of a Non-exempted Property, the Council must comply with section 14(2) of the MFMA (read with regulation 5(1)(b)(i) of the MATR), in that the Council, **at a meeting open to the public, must:**
- 10.19.1 determine whether the Property is needed to provide the minimum level of basic municipal services (if it is then it may not be Disposed of); and
  - 10.19.2 consider the fair market value of the Property and the economic and community value to be received in exchange for the Property.**
- 10.21. Where the Municipality will Let the Property, the Council must determine whether to approve the granting of the Property Right.
- 10.22. Similarly to the determination required in respect of the public participation process, when making either decision contemplated in paragraph 10.20 or 10.21 above, the Council must be fully informed in order to discharge this responsibility. In this regard, the Council shall review the item and make a decision regarding the Disposal or Letting of the Property. This consideration of the item is to be reflected in the minutes of the Council meeting at which it is tabled.
- 10.23. Once the Council has considered this information it will be in a position to make an '*in principle*' decision on whether to Dispose of the Property (as contemplated by regulation 5(1)(b)(ii) of the MATR); or Let the Property (as contemplated by regulation 34(1)(b) of the MATR).
- 10.24. The Council is empowered to impose conditions when granting the '*in principle*' approval, including (without limitation):
- 10.23.1 the method of Disposal or Letting (subject to compliance with the SCM Policy and this Policy (in particular paragraph 11 below));
  - 10.23.2 a floor price or minimum compensation for the Property;
  - 10.23.3 whether the Property may be Disposed of or Let for less than its fair market value, (in which case the Council must first consider the criteria set out in regulation 13(2));
  - 10.23.4 a framework within which direct negotiations for the Disposal or Letting of the Property must be conducted with another person, if the Disposal or Letting is subject to direct negotiations; and
  - 10.23.5 setting a maximum limit in the number of Properties that are to be Disposed of or Let to one particular party or entity.

10.25. In respect of the approval ‘in principle’ to Let Property, such approval by the Council **must** be subject to the following conditions where Property is needed to provide the minimum level of basic municipal services:

10.24.1 the Property Right immediately lapses should the private sector party to whom the Property is Let for any reason ceases or becomes unable to render the service for which the Property is used; and

10.24.2 the private sector party to whom the Property is Let may not without the written consent of the Council sub-Let the Property.

10.26. The Council shall communicate its decision to the Municipal Manager. Within 7 (seven) Business Days of the Council's decision, the Municipal Manager must advise the applicant or official in writing of the decision, and if the Council has approved the Disposal or Letting of the Property ‘in principle’, must commence with the implementation of such decision.

Step 6: Implementation of the Council’s Approval

10.27. **CAUTION:** This stage of the process may not commence unless the ‘*in principle*’ approval has been granted by the Council. It is therefore important to obtain this approval **prior to** the Municipal Manager commencing with this stage of the Disposal or Letting process.

10.28. Disposals/Lettings are to be fair, equitable, transparent, competitive and consistent with this Policy, as well as the SCM Policy (to the extent applicable).

10.29. The LDC must ensure that the general conditions contained in 0 have been complied with.

11. **CATEGORIES OF PROPERTY AND THE METHODS OF DISPOSAL / LETTING**

Detailed Method of Disposal

Unless otherwise decided by Council when making its ‘in principle’ determination whether to approve of a Disposal or Letting in a duly convened meeting of the Council, Property shall be offered by means of the methods set out below:

Category	Zone	Method of Disposal / Letting
A	<ul style="list-style-type: none"> <li>• residential (other than Category B)</li> <li>• commercial</li> <li>• agricultural</li> <li>• industrial</li> <li>• transport</li> <li>• authority</li> </ul> (including properties to be re-zoned as such)	Private Treaty / Closed Tender / Public Tender/Public Auction (unless the Property is to be sold by pre-qualification, in which event the provisions of paragraph 13.20 to 13.24 below should be adhered to).
B	<ul style="list-style-type: none"> <li>• Social Housing</li> </ul>	Private Treaty or Donation
C	<ul style="list-style-type: none"> <li>• Social Care Portfolio</li> </ul>	Private Treaty / Closed Tender / Public Tender/Public Auction/Exchange
D	<ul style="list-style-type: none"> <li>• Non-Core Property</li> </ul>	Closed Tender / Private Treaty

## Public Tender: General Description

- 11.1. This process shall comprise an open and transparent competitive bidding process.
- 11.2. Although the PPPFA does not apply to a Disposal/Letting, the Municipal Manager (and the other respective committees established for the purposes of this stage of the Disposal/Letting) shall be guided by the procedures contained therein when following a competitive bidding process (and as are reflected in the process outlined below).

## Public Tender: Process

- 11.3. If a public tender is to be the method of Disposal/Letting, the Municipal Manager is to communicate with the prospective applicants (if any) informing them of this.
- 11.4. The Municipal Manager must confirm the price internally (which shall not be less than the price as determined or approved by the Council) for the Disposal/Letting, and determine whether the public tender process will be with or without a fixed price before commencing with the further steps described below.
- 11.5. As required by paragraph 26 of the SCM Policy, the Municipal Manager will appoint the members of the bid specification; bid evaluation; and bid adjudication committees. Once established, these committees will report to the Municipal Manager during the Disposal/Letting process. If paragraphs 13.3 to 13.5 below have been complied with, the Municipal Manager is to ensure that the respective bid committees follow the following process:

### bid specification committee

- 11.5.1 prepare the bid documents and the notice for publication;
- 11.5.2 call for development proposals for the alienation (in the case of a Disposal) and/or development of the Property, by publishing advertisements: in the newspapers; on the website of the Municipality; on notice boards within Municipal buildings; and in/on other stipulated mediums;
- 11.5.3 keep record of bid documentation distributed to the public;
- 11.5.4 brief prospective applicants (if required);

### bid evaluation committee

- 11.5.5 open and read bids received;
- 11.5.6 eliminate incorrect bids and compile a list of bids that qualify;
- 11.5.7 compile a report of this process and the committee's recommendation (which may include a recommendation that the bid of an applicant be rejected as a result of that applicant, as principal, already owning other Municipal Property or enjoying a Property Right in relation to other Property, or has concluded or is in the process of concluding a written agreement in terms whereof such applicant will acquire or take transfer of other Property or be granted a Property Right in relation to other Property) to the bid adjudication committee;

bid adjudication committee

- 15.5.6 consider the report and recommendation of the bid evaluation committee;
- 15.5.7 consider the bids and make a recommendation on whether to make a final award and submit this to the Municipal Manager. This recommendation should either:
  - 15.5.8 recommend the applicant with the highest score; or
  - 15.5.9 record that equal points were awarded amongst various applicants, requiring a further random draw process; or
  - 15.5.10 that a final award should not be made and providing reasons;
- 11.6. Once this process is complete, the Municipal Manager must:
  - 11.6.1 consider the recommendation from the bid adjudication committee;
  - 11.6.2 informing the respective applicants, and the auditor of the Municipality of date and time of draw; and
    - 11.6.3 conducting a random draw process to determine who the Property will be allocated to;
    - 11.6.4 in all other circumstances, inform the applicants of the outcome, as well as their right to lodge a written objection or complaint within 14 (fourteen) days of the decision (as contemplated by paragraph 49 of the SCM Policy / regulation 49 of the MSCMR);
  - 16.6.5 where an objection or complaint is received, resolve the objection or complaint in terms of the provisions of paragraph 50 of the SCM Policy / regulation 50 of the MSCMR;
  - 16.6.5 request written acceptance for any conditions stipulated by the Council from the successful applicant;
  - 16.6.6 submit a report regarding the public tender to the Municipal Manager for information purposes;
  - 16.6.7 thereafter, instruct attorneys to attend to the negotiation and conclusion of the agreement between the applicant and the Municipality in respect of the Disposal/Letting; and
  - 16.6.8 in the case of a Disposal, remove the Property from the Municipality's asset register.

Public Auction: General Description

- 11.7. In the case where the Municipal Manager believes that it is in the interest of the community and the Municipality, Property may be Disposed of by public auction (it is highly unlikely that Property will be Let by way of a public auction).
- 11.8. The terms and conditions of each auction shall be determined on a project-by-project basis, in accordance with the specific characteristics and attributes of that Property and the Municipality's strategic objectives. Should the services of an auctioneer be utilised, the auctioneer's commission should be payable by the successful applicant and should not form part of the financial offer to the Municipality.

#### Public Auction: Process

- 11.9. If the process of the Disposal is to take the form of a public auction, the Municipal Manager must discuss and determine the process with auctioneers appointed for this purpose, and prepare public bid documentation with due regard to such determination.

#### Closed Tender: General Description

- 11.10. A closed tender is applicable in instances where a Property:
  - 11.10.1. The Property is Non-Core Property; and
  - 11.10.2. has more than one adjacent owner and is capable of being consolidated with such owners' properties.

#### Closed Tender: Process

- 11.11. If a closed tender process is to be followed, the process will be the same as that outlined above in respect of public tenders, but only the persons whose Property is adjacent to the Non-Core Property are permitted to tender.

#### General:

#### Private Treaty/Exchange/Donation: General Description

- 11.12. A private treaty involves the direct negotiation between the Municipality and third party resulting in the conclusion of a written agreement to Dispose of or Let Property.
- 11.13. A donation "gratis" transfer is a transaction whereby the Municipality Disposes of Property without value. Such donations to organs of state; community-based organisations; non-governmental organisations; non-profit organisations; and civil society organisations, in furtherance of socioeconomic and environmental objectives, may be considered by the Municipality.
- 11.14. An exchange occurs in instance where the Municipality Disposes of Property and acquires Property in a simultaneous transaction, requiring the rules of both to apply. This usually occurs where one party approaches another to purchase property and instead of a purchase price being agreed, the parties exchange ownership of their respective properties. Should the one 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 property is of a lesser value.

#### Private Treaty/Exchange/Donation: Process

- 11.15. If one of these methods is to be employed, the LDC is to inform the prospective applicant/s (including any organ of state) of this, and that, in relation to Category D Properties, and Donations pertaining to Category E Properties, the provisions of section 170 of the MFMA must be adhered to.
- 11.16. The Municipal Manager shall instruct attorneys to attend to the negotiation and conclusion of the agreement between the applicant and the Municipality in respect of the Disposal/Letting.
- 11.17. Where this method involves a Disposal, the Municipal Manager must ensure that the Property is removed from the Municipality's asset register.

#### Sale by Pre-Qualification (Residential Property): General Description

11.18. This method of Disposal/Letting is specifically designed for the sale of vacant residential Property to persons on a waiting list who comply with present criteria for eligibility. Applicants will be requested to register on a waiting list with pre-set qualification criteria. Only persons on the waiting list will be requested to tender for vacant residential Property when made available by Council.

#### Sale by Pre-Qualification (Residential Property): Process

11.19. The Municipal Manager is to prepare waiting list qualification criteria.

11.20. The Municipal Manager must invite applicants to register on the waiting list, by publication: in newspapers; on the website of the Municipality; on notice boards within the Municipality buildings; or by other stipulated mediums.

11.21. When a Property becomes available, the Municipal Manager must determine the compensation for the Disposal/Letting by having regard to the valuation conducted in respect of the Property.

11.22. Applicants on the waiting list must be requested to tender. The public tender process set out in paragraphs 13.3 to **Error! Reference source not found.** shall apply in this regard.

#### Call for alternative proposals

11.23. Should none of the methods above be appropriate for the nature of the Property Transaction, the Municipal Manager may call for alternative proposals in respect of the Property in question.

### **12. ALTERNATE DISPOSAL/LETTING PROCEDURE**

12.1. There may be instances where the procedures and methods set out in paragraphs 10 and 11 will vary in respect of a Disposal/Letting. These instances are set out below.

12.2. In such instances, the Municipal Manager together with the Municipal Manager must record the reasons for:

12.2.1 dispensing with a competitive process; and

12.2.3 any deviation in terms of this paragraph 14,

and report on such reasons at the next meeting of the Council and include such reasons as a note to the annual financial statements.

#### Appointment of a Service Provider by Competitive Bidding

12.3. The MATR includes provisions regulating the manner in which Property Transactions should be dealt with in circumstances where the primary transaction is the appointment of a service provider to perform a municipal service or commercial service. As noted in paragraph 10.11 above, steps 1 to 5 of paragraph 10 must still be complied with in such instances. However, once these steps have been complied with, the Municipal Manager (on behalf of the Municipality) can negotiate directly with the service provider when Disposing of or Letting the Property.

- 12.4. For the purposes of this Policy:
- 12.4.1 a “*commercial service*” means a service other than a municipal service rendered by a private sector party or an organ of state to a municipality on a commercial basis and which is procured by the municipality through its supply chain management policy;
  - 12.4.2 a “*municipal service*” means a municipal service as defined in the Systems Act, namely a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether:
  - 12.4.3 such a service is provided, or to be provided, by the municipality through an internal or external mechanism as contemplated in section 76 of the Systems Act; and
  - 12.4.4 fees, charges or tariffs are levied in respect of such a service or not.
- 12.5. In such circumstances, the primary transaction is the appointment of the service provider, which shall be undertaken pursuant to the competitive bidding processes prescribed in the Systems Act. The conditions set out below are also applicable in such circumstances.
- 12.6. If the Municipality intends on Disposing of Property, or Letting Property with a value exceeding R10,000,000.00 (ten million Rand), to a private sector party or organ of state following the selection of a service provider through the competitive bidding processes prescribed in the Systems Act then:
- 12.6.1 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;
  - 12.6.2 the determinations taken by the Council when determining whether to approve the Disposal/Letting ‘in principle’ **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
  - 12.6.3 all documents prepared for the purpose of those decisions (including the Disposal Report), 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.
- 12.7. If the Municipality Lets the Property to be used for or in connection with a municipal service, the Municipality must take all reasonable steps to ensure that the granting of the Property 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 had it not granted such right.
- 12.8. If the Municipality Lets Property needed to provide the minimum level of basic municipal services, such right may only be granted on condition that:
- 12.8.1 the granting of the Property 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 Property is used; and

- 12.8.2 the private sector party or organ of state to whom the Property Right is granted may not without the written consent of the Municipality grant a Property Right to another person.

Unsolicited Bids

- 12.9. Section 113 of MFMA regulates the process in instances where the Municipality receives unsolicited bids to Dispose of or Let Property.
- 12.10. The Municipality is not obliged to consider an unsolicited bid, and if it does decide to consider an unsolicited bid, the Municipal Manager must ensure that the process set out in paragraph 37 of the SCM Policy is complied with in full.

**13. METHODS OF DISPOSAL / LETTING**

Detailed Method of Disposal

Unless otherwise decided by Council when making its ‘in principle’ determination whether to approve of a Disposal or Letting in a duly convened meeting of the Council, Property shall be offered by means of the methods set out below:

Category	Zone	Method of Disposal / Letting
A	<ul style="list-style-type: none"> <li>• residential (other than Category B)</li> <li>• commercial</li> <li>• agricultural</li> <li>• industrial</li> <li>• transport</li> <li>• authority</li> </ul> (including properties to be re-zoned as such)	Private Treaty / Closed Tender / Public Tender / Public Auction (unless the Property is to be sold by pre-qualification, in which event the provisions of paragraph 13.20 to 13.24 below should be adhered to).
B	<ul style="list-style-type: none"> <li>• Social Housing</li> </ul>	Private Treaty or Donation
C	<ul style="list-style-type: none"> <li>• Social Care Portfolio</li> </ul>	Private Treaty / Closed Tender / Public Tender / Public Auction / Exchange
D	<ul style="list-style-type: none"> <li>• Non-Core Property</li> </ul>	Closed Tender / Private Treaty

Public Tender: General Description

- 13.1. This process shall comprise an open and transparent competitive bidding process.
- 13.2. Although the PPPFA does not apply to a Disposal/Letting, the Municipal Manager (and the other respective committees established for the purposes of this stage of the Disposal/Letting) shall be guided by the procedures contained therein when following a competitive bidding process (and as are reflected in the process outlined below).

Public Tender: Process

- 13.3. If a public tender is to be the method of Disposal/Letting, the Municipal Manager is to communicate with the prospective applicants (if any) informing them of this.
- 13.4. The Municipal Manager must confirm the price internally (which shall not be less than the price as determined or approved by the Council) for the Disposal/Letting, and determine whether the public tender process will be with or without a fixed price before commencing with the further steps described below.

- 13.5. The public tender process is to comply with paragraphs 20 to 29 of the SCM Policy (read with the changes required by the context), with the Municipal Manager maintaining oversight of this process.
- 13.6. As required by paragraph 26 of the SCM Policy, the Municipal Manager will appoint the members of the bid specification; bid evaluation; and bid adjudication committees. Once established, these committees will report to the Municipal Manager during the Disposal/Letting process. If paragraphs 13.3 to 13.5 above have been complied with, the Municipal Manager is to ensure that the respective bid committees follow the following process:

bid specification committee

- 13.6.1 prepare the bid documents and the notice for publication;
- 13.6.2 call for development proposals for the alienation (in the case of a Disposal) and/or development of the Property, by publishing advertisements: in the newspapers; on the website of the Municipality; on notice boards within Municipal buildings; and in/on other stipulated mediums;
- 13.6.3 keep record of bid documentation distributed to the public;
- 13.6.4 brief prospective applicants (if required);

bid evaluation committee

- 13.6.5 open and read bids received;
- 13.6.6 eliminate incorrect bids and compile a list of bids that qualify; compile a report of this process and the committee's recommendation (which may include a recommendation that the bid of an applicant be rejected as a result of that applicant, as principal, already owning other Property or enjoying a Property Right in relation to other Property, or has concluded or is in the process of concluding a written agreement in terms whereof such applicant will acquire or take transfer of other Property or be granted a Property Right in relation to other Property) to the bid adjudication committee;

bid adjudication committee

- 13.6.8 consider the report and recommendation of the bid evaluation committee;
- 13.6.9 consider the bids and make a recommendation on whether to make a final award and submit this to the Municipal Manager. This recommendation should either:
- 13.6.9.1 recommend the applicant with the highest score; or
- 13.6.9.2 record that equal points were awarded amongst various applicants, requiring a further random draw process; or
- 13.6.9.2 that a final award should not be made and providing reasons;

#### Public Auction: General Description

- 13.7. In the case where the Municipal Manager believes that it is in the interest of the community and the Municipality, Property may be Disposed of by public auction (it is highly unlikely that Property will be Let by way of a public auction).
- 13.8. The terms and conditions of each auction shall be determined on a project-by-project basis, in accordance with the specific characteristics and attributes of that Property and the Municipality's strategic objectives. Should the services of an auctioneer be utilised, the auctioneer's commission should be payable by the successful applicant and should not form part of the financial offer to the Municipality.

#### Public Auction: Process

- 13.9. If the process of the Disposal is to take the form of a public auction, the Municipal Manager must discuss and determine the process with auctioneers appointed for this purpose, and prepare public bid documentation with due regard to such determination.

#### Closed Tender: General Description

- 13.10. A closed tender is applicable in instances where a Property:
  - 13.10.1. The Property is Non-Core Property; and
  - 13.10.2. has more than one adjacent owner and is capable of being consolidated with such owners' properties.

#### Closed Tender: Process

- 13.11. If a closed tender process is to be followed, the process will be the same as that outlined above in respect of public tenders, but only the persons whose Property is adjacent to the Non-Core Property are permitted to tender.

#### General:

- 13.12. Properties offered to the public or applicants by means of a public tender, public auction or closed tender which received no interest will be placed on a list of available properties to be disposed of by means of a private treaty, subject to the following conditions:
  - 13.12.1 it be alienated to the first person (other than an official of the Municipality or a relative (whether by blood or consanguinity) or an associate of such official, unless the Council has in a duly convened meeting of the Council authorised the application of and Disposal/Letting to such official or relative) applying for the Property;
  - 13.12.2 it be alienated at a market related value based on, without hereby or thereby waiving any obligation or applicable condition in favour of, or granting, creating or establishing any right, and/or entitlement for any applicant, purchaser, prospective applicant or prospective purchaser of the Property or any other person or creating, establishing or imposing an obligation on the Municipality, the proposed zoning or re-classification; and

13.12.3 if necessary, the provisions of section 170 of the MFMA be adhered to by the parties.

13.13. If the Property is not Disposed of or Let within two years by means of private treaty, it will be removed from the list of available Properties and be made available again by means of a public tender, public auction or closed tender process.

#### Private Treaty / Exchange / Donation: General Description

13.14. A private treaty involves the direct negotiation between the Municipality and third party resulting in the conclusion of a written agreement to Dispose of or Let Property.

13.15. A donation “gratis” transfer is a transaction whereby the Municipality Disposes of Property without value. Such donations to organs of state; community-based organisations; non-governmental organisations; non-profit organisations; and civil society organisations, in furtherance of socioeconomic and environmental objectives, may be considered by the Municipality.

13.16. An exchange occurs in instance where the Municipality Disposes of Property and acquires Property in a simultaneous transaction, requiring the rules of both to apply. This usually occurs where one party approaches another to purchase property and instead of a purchase price being agreed, the parties exchange ownership of their respective properties. Should the one 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 property is of a lesser value.

#### Private Treaty / Exchange / Donation: Process

13.17. If one of these methods is to be employed, the Municipal Manager is to inform the prospective applicant/s (including any organ of state) of this, and that, in relation to Category D Properties, and Donations pertaining to Category E Properties, the provisions of section 170 of the MFMA must be adhered to.

13.18. The Municipal Manager shall instruct attorneys to attend to the negotiation and conclusion of the agreement between the applicant and the Municipality in respect of the Disposal/Letting.

13.19. Where this method involves a Disposal, the Municipal Manager must ensure that the Property is removed from the Municipality's asset register.

#### Sale by Pre-Qualification (Residential Property): General Description

13.20. This method of Disposal/Letting is specifically designed for the sale of vacant residential Property to persons on a waiting list who comply with present criteria for eligibility. Applicants will be requested to register on a waiting list with pre-set qualification criteria. Only persons on the waiting list will be requested to tender for vacant residential Property when made available by Council.

#### Sale by Pre-Qualification (Residential Property): Process

13.21. The Municipal Manager is to prepare waiting list qualification criteria.

13.22. The Municipal Manager must invite applicants to register on the waiting list, by publication: in newspapers; on the website of the Municipality; on notice boards within the Municipality buildings; or by other stipulated mediums.

- 13.23. When a Property becomes available, the Municipal Manager must determine the compensation for the Disposal/Letting by having regard to the valuation conducted in respect of the Property.
- 13.24. Applicants on the waiting list must be requested to tender. The public tender process set out in paragraphs 13.3 to **Error! Reference source not found.** shall apply in this regard.

Call for alternative proposals

- 13.25. Should none of the methods above be appropriate for the nature of the Property Transaction, the Municipal Manager may call for alternative proposals in respect of the Property in question.

#### 14. **ALTERNATE DISPOSAL/LETTING PROCEDURE**

- 14.1 There may be instances where the procedures and methods set out in paragraphs 10 and 11 above will vary in respect of a Disposal/Letting. These instances are set out below.
- 14.2 In such instances, the Municipal Manager together with the Municipal Manager must record the reasons for:
- 14.2.1 dispensing with a competitive process; and
- 14.2.2 any deviation in terms of this paragraph 14,

and report on such reasons at the next meeting of the Council and include such reasons as a note to the annual financial statements.

#### Appointment of a Service Provider by Competitive Bidding

- 14.3 The MATR includes provisions regulating the manner in which Property Transactions should be dealt with in circumstances where the primary transaction is the appointment of a service provider to perform a municipal service or commercial service. As noted in paragraph 10.11 above, steps 1 to 5 of paragraph 10 must still be complied with in such instances. However, once these steps have been complied with, the Municipal Manager (on behalf of the Municipality) can negotiate directly with the service provider when Disposing of or Letting the Property.
- 14.4 For the purposes of this Policy:
- 14.4.1 a “*commercial service*” means a service other than a municipal service rendered by a private sector party or an organ of state to a municipality on a commercial basis and which is procured by the municipality through its supply chain management policy;
- 14.4.2 a “*municipal service*” means a municipal service as defined in the Systems Act, namely a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether:
- 14.4.2.1 such a service is provided, or to be provided, by the municipality through an internal or external mechanism as contemplated in section 76 of the Systems Act; and
- 14.4.2.2 fees, charges or tariffs are levied in respect of such a service or not.

- 14.5 In such circumstances, the primary transaction is the appointment of the service provider, which shall be undertaken pursuant to the competitive bidding processes prescribed in the Systems Act. The conditions set out below are also applicable in such circumstances.
- 14.6 If the Municipality intends on Disposing of Property, or Letting Property with a value exceeding R10,000,000.00 (ten million Rand), to a private sector party or organ of state following the selection of a service provider through the competitive bidding processes prescribed in the Systems Act then:
- 14.6.1 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;
  - 14.6.2 the determinations taken by the Council when determining whether to approve the Disposal/Letting 'in principle' **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
  - 14.6.3 all documents prepared for the purpose of those decisions (including the Disposal Report), 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.
- 14.7 If the Municipality Lets the Property to be used for or in connection with a municipal service, the Municipality must take all reasonable steps to ensure that the granting of the Property 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 had it not granted such right.
- 14.8 If the Municipality Lets Property needed to provide the minimum level of basic municipal services, such right may only be granted on condition that:
- 14.8.1 the granting of the Property 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 Property is used; and
  - 14.8.2 the private sector party or organ of state to whom the Property Right is granted may not without the written consent of the Municipality grant a Property Right to another person.

### Unsolicited Bids

- 14.9 Section 113 of MFMA regulates the process in instances where the Municipality receives unsolicited bids to Dispose of or Let Property.
- 14.10 The Municipality is not obliged to consider an unsolicited bid, and if it does decide to consider an unsolicited bid, the Municipal Manager must ensure that the process set out in paragraph 37 of the SCM Policy is complied with in full.

## 15. **SOCIAL HOUSING**

### Broader legislative context of Social Housing

- 15.1. Social Housing aims to promote urban restructuring through the social, physical and economic integration of housing developments into already established areas by establishing well-managed, quality rental or co-operative housing options for the poor.
- 15.2. The Municipality is a sphere of government and as such it is important to keep in mind that all Social Housing is public property. As such the Disposal/Letting of Social Housing takes place in the broader context of national or provincial policy on housing,

- planning for housing for the poor, community open space requirements, the built environment, land use management, land reform and agriculture related activities, to name a few, that need to be considered.
- 15.3. Where the Municipality is Disposing of Social Housing, the Municipal Manager should make provision in the Disposal Report for a consideration on how the Municipality's decision will impact, support, and align with, government's policies overall. In this way, when the Council determines whether the Property is needed to provide the minimum level of basic municipal services (as required by section 14 of the MFMA), it will have an opportunity to consider these aspects, thus ensuring that government's overarching policies are factored into this determination.
  - 15.4. When Disposing of or Letting Social Housing, the Municipal Manager must ensure that the Municipal planning department; provincial department(s) responsible for housing and land management; and the national Departments of Human Settlements and Land Reform and Rural Development, are consulted on such matters as it is anticipated that these matters will be guided by further national policies.
  - 15.5. In order for the Municipality to be involved in the development of Social Housing, beyond making Property available in terms of the procedures set out above, it will be necessary for the Municipality to establish an accredited social housing institution as contemplated in section 13(4) of the Social Housing Act.
  - 15.6. In respect of the compensation to be received, the Municipal Manager is to ensure that the applicable provisions of paragraph 6 of **0** are adhered to.

#### Disposals/Letting of Social Housing: Process

- 15.7. Where Social Housing is Disposed of or Let, paragraphs 10 and 11 above **do not** apply.
- 15.8. Further, the SCM Policy (see subparagraphs 40(2)(b)(i) and (c)(i)) permits the Municipality to Dispose of or Let Property at prices below market value when the public interest or plight of the poor so demand.
- 15.9. Where the Municipal Manager determines that the Municipality will Dispose of or Let Social Housing, it must prepare a waiting list as well as waiting list qualification criteria for publication.
- 15.10. Once approved by the Municipal Manager, the Municipal Manager must cause the waiting list and qualification criteria to be published (through whatever medium it considers most appropriate in the circumstances).
- 15.11. Thereafter, eligible applicants may register to be placed on the waiting list. Only persons on the waiting list will be considered when Social Housing is Disposed of or Let. This process will be on a 'first come first serve' basis.
- 15.12. When a Property becomes available, the Municipal Manager must determine the compensation for the Disposal/Letting by having regard to the valuation conducted in respect of the Property (see paragraph 8 above).
- 15.13. Social Housing is Category-B Property, and is therefore to be Disposed of or Let via private treaty or donation (see paragraph 11 above), unless the Council, Municipal Manager or LDC (as the case may be) determine otherwise.

## 16. SOCIAL CARE PORTFOLIO

- 16.1. One of the Municipality's Property portfolios is Social Care.
- 16.2. Properties within the Social Care portfolio are used for a wide range of Social Care services provided by organisations such as welfare, charitable, cultural and religious organisations.
- 16.3. When Disposing of or Letting Property categorised as Category-C (i.e. Social Care), steps 1 to 6 as set out in paragraph 10 above must be complied with, and paragraph 11 will also apply in respect of the method of Disposal/Letting.
- 16.4. However, when determining the consideration payable for Social Care Property, the Municipal Manager shall, as part of the preparation of item to be tabled to Council, determine what the applicable below-market rate will be (having regard to an annual tariff which must be set for this purpose) for consideration by the Council when making its 'in principle' determinations as part of the approval process.
- 16.5. The Municipality also reserves the right to entertain unsolicited bids for the Disposal/Letting of Property for Social Care uses, on condition that the Municipal Manager ensures that the applicable provisions of this Policy and the SCM Policy in respect of unsolicited bids, as well as the Municipality's IDP objectives, are complied with.
- 16.6. The following factors shall be considered relevant in the selection and allocation of Property to places of worship:
  - 16.6.1 the size of the congregation/membership;
  - 16.6.2 availability of finance to acquire the site and develop same within one year;
  - 16.6.3 whether or not such a denomination is already represented in the area;
  - 16.6.4 whether or not welfare type facilities/activities will be provided in addition to religious facilities; and
  - 16.6.5 whether or not the congregation/membership is drawn from the area in which a site is being applied for.
- 16.7. The Municipal Manager must ensure that the selection of Social Care service providers is undertaken and driven by the line department within the Municipality that has functional responsibility for the relevant type of Social Care.
- 16.8. Even though the appointment of a Social Care service providers by the Municipality may not fall within the provision of a municipal or commercial service, whether possible and practicable, the Municipality will deal with Properties in the Social Care portfolio on a pro-active basis in accordance with the same procedures contemplated in paragraph 0 above (including direct negotiations and the conclusion of a service provider agreement where considered necessary).
- 16.9. In addition to or to qualify the guidelines contemplated in this Policy relating to this portfolio, specific guidelines to govern the Disposal/Letting of Property in relation to this portfolio may be set and approved from time to time by the Council.

### Sports Facilities and Public Amenities Portfolio

- 16.10. Sports facilities and public amenities are a further Property portfolio managed by the Municipality.
- 16.11. Certain of the Properties within the sports facilities and public amenities portfolio are used and/or controlled and/or managed on a non-profit, community-based basis,

whereas others, such as sports facilities used by professional bodies are used on a commercial, profit-making basis.

- 16.12. Wherever possible and practicable, the Municipal Manager will ensure that Properties in this portfolio and which are not used on a commercial profit-making basis are dealt with in the same manner as Properties within the Social Care portfolio.
- 16.13. In addition to or to qualify the guidelines contemplated in this Policy relating to this portfolio, specific guidelines to govern the Disposal/Letting of Property in relation to this portfolio may be set and approved from time to time by the Council.

## 17. **RESERVATION OF PROPERTY FOR MUNICIPAL PURPOSES**

- 17.1. In order to give effect to the Municipality's considerations and objectives in terms of this Policy in respect of Property to be used for municipal purposes, the Municipal Manager shall (on behalf of the Municipality) reserve Property required for such purposes, to be approved of by the Municipal Manager.
- 17.2. In all circumstances where a Property or Properties is/are reserved for a purpose which falls within a functional responsibility of another line department within the Municipality, the Municipal Manager will ensure that a service level agreement (“SLA”) is concluded between the appropriate line department and responsible officials within the Municipality.
- 17.3. Examples of the types of Property which fall within the functional responsibility of a relevant line department are as follows:
  - 17.3.1 Municipal Resorts - Sports and Recreation;
  - 17.3.2 Parks - Public Open Spaces;
  - 17.3.3 Social Care Properties - Economic Development and Social Welfare;
  - 17.3.4 Sports Facilities - Sports and Recreation.
- 17.4. The SLA shall regulate the respective costs and responsibilities of the Municipality and the line department in respect of the reserved Property(ies) and shall, at a minimum, deal with:
  - 17.4.1 Properties used by the line department itself, for example, where the line department uses the Property(ies) for provision of a municipal service (where the municipal service is provided through an internal mechanism as provided for in the Systems Act);
  - 17.4.2 Properties used by third party service providers, for example, where the line department appoints a service provider to provide municipal services;
  - 17.4.3 Properties in respect of which the line department has appointed a private party to manage the Property, for example, in terms of ‘facilities management agreements’.
- 17.5. The SLA's shall include provisions dealing with:
  - 17.5.1 the purpose for which a Property is reserved;
  - 17.5.2 a clear description of the purpose for which a private party is being appointed by the Municipality and the private party's contractual obligations in respect of both the purpose of its appointment (such as the provision of the service), as well as in respect of any Property Rights it may have been granted in respect of the Property;

- 17.5.3 the manner in which both the appointment of the private party and the Property Transaction will be procured in accordance with the applicable policy provisions below;
  - 17.5.4 the entering into of contract(s) with the private party, and the allocation of the respective responsibilities of the line department and the Municipality in respect thereof;
  - 17.5.5 the distinct responsibilities of the responsible official/department of the Municipality and the respective line department in respect of monitoring and oversight of the use, control and management of the Property once the private party has been appointed;
  - 17.5.6 the line department's responsibilities in respect of the hand-over of reserved Property back to the Municipality once the line department no longer requires the Property for the purpose for which it was reserved.
- 17.6. Given that the Municipality is the custodian of the Municipality's Property, only it may conclude a contract with a third party in respect of a Property Transaction. For the avoidance of any doubt, this applies to any contract, irrespective of the description of the agreement (for example, a so-called facilities management agreement) which deals with the granting by the Municipality of a Property Right.
- 17.7. Where it becomes necessary or appropriate to do so, the Municipality and the line department shall endeavour to enter into a transaction-specific SLA.

## **Annexure A**

### **1. General Provisions for Disposal/Letting agreements**

#### **1.1 The Disposal/Letting agreement must:**

- 1.1.1 be prepared by an attorney appointed by the Municipality;
- 1.1.2 be circulated to:

- 1.1.2.1 all relevant departments for comment which comment must be provided within 10 (ten) Business Days after the date of circulation of such agreement to the department concerned;
- 1.1.2.2 the Municipal Manager, together with any comments received from any other department, for final review and approval; and
- 1.1.2.3 and thereafter be forwarded to the official authorised to sign the agreement and the signatory of the counterpart; and

- 1.1.3 once signed, be stored for safe keeping in the municipal Archives, while copies thereof are to be distributed to the relevant departments for the levying of rates, opening of relevant accounts and contract management.

#### **1.2 As a general rule, all Disposals/Letting (or any offer to Dispose of or Let Property) will be subject to the results or outcome of any applicable legislative process or requirement such as those processes contemplated in any:**

- 1.2.1 applicable land use planning ordinance;
- 1.2.2 applicable closure or divergence of roads, lanes or public open spaces ordinance; and

1.2.3 applicable environmental legislation, including impact assessment and feasibility study, whether or not such process or requirement finds application as a result of the operation of law or the Council so determines.

## 2. **General Conditions of Disposal**

2.1 In respect of Non-Exempted Property, the Disposal agreement to be entered into between the Municipality and the successful applicant must set out the terms and conditions of the Disposal, including, as a minimum:

2.1.1 a sufficient description of the Property being Disposed of in order to identify the Property:

2.1.2 particulars of any subsidiary assets that are transferred with the Property;

2.1.3 particulars of any liabilities transferred with the Property;

2.1.4 the amount of any compensation payable to the Municipality for the Disposal of the Property, and the terms and conditions of payment; and

2.1.5 the effective date from which the risk and accountability for the Property is transferred to the receiving party.

2.2 If the Non-Exempted 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 regulation 12(2)(a), or for the performance of a commercial service referred to in regulation 12(2)(b), of the MATR, the Disposal agreement referred to in paragraph 0 above:

2.2.1 must contain provision for:

2.2.1.1 contract termination in the case of non- or underperformance;

2.2.1.2 dispute resolution mechanisms to settle disputes between the parties; and

2.2.1.3 a periodic review of the agreement once every three years, in the case of an agreement for longer than three years; and

2.2.2 may be incorporated into any service delivery agreement or procurement contract to be concluded with the service provider.

2.3 In respect of Exempted Property, the Disposal agreement to be entered into between the Municipality and the organ of state must:

2.3.1 set out the terms and conditions of the Disposal, including, as a minimum:

2.3.1.1 a sufficient description of the Property being Disposed of in order to identify the Property:

2.3.1.2 particulars of any subsidiary assets that are transferred with the Property;

2.3.1.3 details of all staff that will be affected and the legislation in terms of which such staff will be transferred (to the extent applicable);

2.3.1.4 particulars of any liabilities transferred with the Property;

2.3.1.5 the amount of any compensation payable to the Municipality for the Disposal of the Property, and the terms and conditions of payment;

2.3.1.6 the effective date from which the risk and accountability for the Property is transferred to the organ of state;

- 2.3.1.7 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 Property, the terms and conditions of such usage together with the basis of compensation for such usage and the financial risk exposure to the Municipality;
  - 2.3.1.8 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 Property, together with the basis of compensation for such staff and the financial risk exposure to the Municipality;
  - 2.3.1.9 where the Property is to be used by both the Municipality and the organ of state, the basis of how the Property is to be shared as well as how the costs and benefits of the shared Property will be apportioned between parties;
  - 2.3.1.10 the value of the Property, as well as appropriate evidence to support the valuation of the Property;
- 2.3.2 state that the Disposal is effected on the basis of the provisions of Chapter 3 of the MATR and that such provisions must for this purpose be regarded as forming part of the agreement; and
- 2.3.3 be signed on behalf of the Municipality and the organ of state.
- 2.4 Before entering into a Disposal agreement referred to in paragraph 0 above:
- 2.4.1 the Municipality must consider the effect that the transfer of the Property will have on its credit rating and ability to raise long-term or short-term funds in the future; and its financial position and cash flow; and
  - 2.4.2 the organ of state to whom the Exempted Property is to be Disposed must undertake and document a due diligence review on the Property and any liabilities transferred to it.
- 2.5 The results of the due diligence must be taken into account in any decision to Dispose of the Property in terms of Chapter 3 of the MATR.

### **3 Specific Conditions for Disposal**

- 3.1 In relation to a Disposal, unless otherwise determined by the Municipal Manager in view of the circumstances prevailing at the time, the following conditions shall, without limitation, become applicable:
- 3.1.1 all costs pertaining to a transaction shall be borne by the purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs. Where necessary, a deposit to cover the costs may be required. Subject to the aforesaid, the Municipality reserves the right to require the purchaser, who upon such requisition should be obliged to and at such purchaser's sole cost and expense, to commence any such required and/or applicable or related process (including without limitation an economic impact assessment, an application for rezoning and/or sub-division);
  - 3.1.2 should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of a Disposal, all related costs shall be for the account of the purchaser;

- 3.1.3 in relation to any development, the developer shall be responsible for the physical costs or a contribution thereto, as the case may be, to upgrade or establish bulk services;
- 3.1.4 small areas of land such as closed roads or portions of public place sold to an adjacent owner, must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the Municipality, make such consolidation undesirable;
- 3.1.5 where Property is Disposed for the purposes of further development, a condition must be included in the deed of sale stipulating that such development must be contemplated within 2 (two) years from date of registration. Likewise a condition must be included in the agreement to provide for forfeiture in the event that the development had not been completed within the required time period, unless an extension has been granted by the Municipality;
- 3.1.6 save with prior approval, the Property Disposed of may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations pertaining to such purposes;
- 3.1.7 the agreement of Disposal shall be finalised and concluded within 60 (sixty) Business Days from the date of the Municipality's official written request, and registration must be effected as soon as possible after the date on which the said agreement becomes unconditional as to its terms. Failure to strictly comply shall, unless the Municipal Manager determines otherwise, cause the sale to lapse;
- 3.1.8 the agreement of Disposal must contain conditions that:
  - 3.1.8.1 details of any encumbrances, rights and servitudes, applicable to the Property;
  - 3.1.8.2 that the purchaser shall comply with all laws applicable to it or the Municipality;
  - 3.1.8.3 that the purchaser shall not do anything which will result in the Municipality being in breach or non-compliance with any applicable laws;
  - 3.1.8.4 that the purchaser shall be liable for and shall indemnify the Municipality against any claims arising out of or in connection with the purchaser's failure, refusal and/or neglect to comply with the aforesaid conditions;
- 3.1.9 the agreement must contain a suspensive condition in respect of property which is sold subject to the procurement of certain requisite approvals, including without limitation, any approval in terms of land use planning legislation;

#### **4 General Conditions of Letting**

- 4.1 For the Letting of Property, the agreement shall set out:
  - 4.1.1 a sufficient description of the Property being Disposed for identification purposes;
  - 4.1.2 particulars of any other subsidiary assets that are to be made available with the Disposal of the Property;
  - 4.1.3 period for which the Property Right is granted;
  - 4.1.4 the amount of compensation payable and the terms and conditions of payment for the Property Right;
  - 4.1.5 requirements in respect of maintenance and safeguarding of the Property for its intended purpose, taking into account the condition of the Property as at the date of Disposal;

- 4.1.6 where the Property is to be shared by the Municipality and the receiving party to whom the Property Right is granted, the basis of how the Property is to be shared as well as how the costs and benefits of the shared Property will be apportioned;
- 4.1.7 the extent to which the receiving party will be required to make improvements or enhancements to the Property and the terms and conditions regulating such enhancements and improvements;
- 4.1.8 a statement to the effect that the risk and accountability is transferred and the effective date of such transfer;
- 4.1.9 a clause preventing the receiving Party from further Letting (or Disposing) of the Property.

## **5 Specific Conditions for Letting**

- 5.1 Unless otherwise determined by the Municipality in view of the circumstances prevailing at the time, the following conditions shall, without limitation, become applicable in relation to the Letting of Property:
  - 5.1.1 all costs pertaining to a transaction shall be borne by the purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs. Where necessary, a deposit to cover the costs may be required. Subject to the aforesaid, the Municipality reserves the right to require the purchaser, who upon such requisition should be obliged to and at such purchaser's sole cost and expense, to commence any such required and/or applicable or related process (including without limitation an economic impact assessment, an application for rezoning and/or sub-division);
  - 5.1.2 in relation to any development, the developer or lessee shall be responsible for the physical costs or a contribution thereto, as the case may be, to upgrade or establish bulk services;
  - 5.1.3 the Municipality may:
    - 5.1.3.1 enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of section 33 of the MFMA, and
    - 5.1.3.2 enter into a public-private partnership agreement, but only in accordance with the provisions of section 120 of the MFMA;
  - 5.1.4 an agreement for the lease of Property shall be in writing stipulating the items and conditions of the contract or agreement, which shall include provisions providing for:
    - 5.1.4.1 the termination of the contract or agreement in the case of non or underperformance;
    - 5.1.4.2 dispute resolution mechanisms to settle disputes between the parties;
    - 5.1.4.3 a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years;
    - 5.1.4.4.1 any other matters that may be prescribed;

- 5.1.4.4 no Property shall be sub-let and no lease may be ceded or assigned without the prior written approval of the Municipality. Where the lessee is a person other than a natural person, the Municipality must prior approve:
- 5.1.4.5.1 any sale, cession or transfer of the beneficial or registered holding of any interest in the lessee (such as shares, member's interest or beneficial interests) which on its own or grouped together with any other sale occurring prior to such sale, result in the sale, cession or transfer of more than 10% of the total of such interest in the lessee; or
  - 5.1.4.5.2 any change in the composition of the control structures (such as directors and trustees) of the lessee which results in any person, who prior to such change, did not have any control over the business and/or affairs of the lessee, acquiring such control, the Municipality must approve such sale, cession and/or transfer; and
  - 5.1.4.5.3 failing such approval the relevant lease agreement shall immediately terminate upon such sale, cession and/or transfer is concluded and/or effected;
- 5.1.4.6 an owner of immovable property who leases adjoining Municipal Property may be substituted by his successor in title for the duration of the remainder of the lease term;
- 5.1.4.7 rental, except where it is decided otherwise by the Municipality shall be a fixed price (which may also be a fixed percentage of turnover);
- 5.1.4.8 the lessee shall, as a rule, be liable for the payment of rates and service charges in respect of the Properties listed in the current valuation roll. In the case of leases to certain social care users at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the rates policy of the Municipality;
- 5.1.4.9 the letting of lanes, public open spaces, road reserves and the like shall be subject to the following –
- 5.1.4.9.1 closing off/securing by the lessee of the leased area to the satisfaction and discretion of the Municipality;
  - 5.1.4.9.2 the lessee shall be responsible for the cost of relocation or installation of services where required and for the securing of servitudes, and
  - 5.1.4.9.3 the closure of the lanes, public open spaces and road in terms of the applicable ordinance or as may be required in the circumstances shall be done at the cost of the lessee;
- 5.1.4.10 the lessee shall indemnify the Municipality against any possible claims arising from the lease or use the Property;
- 5.1.4.11 where Property is leased for development, a condition shall be included in the lease agreement stipulating that such development shall be completed with two years from date of conclusion of the lease agreement. Likewise a suspensive condition shall be included in the lease agreement to provide for cancellation in the event that the development had not been completed;

- 5.1.4.12 save with prior written approval of the Municipality the Property may only be used for the purpose for which it was let;
- 5.1.4.13 the lessee shall be responsible for maintaining the Property including all improvements thereon to the satisfaction of the Municipality;
- 5.1.4.14 improvements provided by the lessee and which the Council wishes to retain, shall, without any compensation to the lessee and free of charge" to the Municipality become the property of the Municipality once the lease period has terminated and/or in the event the agreement is cancelled or terminated as a result of a breach by the lessee of any term and/or condition of such lease. Alternatively, a written agreement may be reached, prior to the construction or erection of any improvements of whatsoever nature to the Property or buildings or structures thereon, to the effect that the lessee may within three months of termination of the lease agreement remove any improvements erected from its own funds, failing which such improvements shall, without any compensation to the lessee and free of charge to the Municipality become the property of the Municipality. The lessee shall be liable for the cost involved in the removal of such improvements not required by the Municipality.

5.1.5 Unless otherwise determined by the Municipality in view of the circumstances prevailing at the time, in relation to any Servitude Rights and Way Leave Rights, the provisions recorded in paragraph 7.2 above shall apply, mutatis mutandis.

## **6 Conditions for Compensation and Fair Market Value**

- 6.1 The Municipal Manager must endeavour to ensure that the compensation the Municipality receives for the Disposal/Letting of the Property is at or above the market related value of the Property or the Property Right (as the case may be). In the event that compensation for the Disposal or Letting is not the market related value or above, it must at the minimum reflect the fair value.
- 6.2 The Municipal Manager must ensure that paragraph 8 of the Policy is adhered to, in that a registered valuator must be appointed to obtain a market related or fair value of the Property or the Property Right, and the valuation process complies with the provisions of such paragraph.
- 6.3 If the Municipality, on account of the public interest, intends to Dispose/Let Property for less than the market value or market-related prices, it must take into account the factors specified in sub-regulation 13(2) of the MATR.
- 6.4 In the case of a lease agreement, the compensation must be reviewed on an annual basis or as may otherwise be agreed between the parties to such agreement to ensure that it remains market-related (or, in the event of a fair value rental amount, the adjustment thereof is market-related) and the agreement must provide for future escalation of the rental following the lapsing of the relevant fixed period.
- 6.5 The reversionary clause contemplated above should include, without limiting or derogating from any other right which the Municipality may have in law, the right of the Municipality to oblige the alienee to pay the Municipality the difference between the actual purchase price paid and the fair market value of the Property in the event that the alienee ceases to use the Property for a purpose other than as agreed with the Municipality or further Disposes the Property, failing which the Municipality shall be entitled to regain ownership of the Property. The fair market value shall be determined as at the date on which the alienee:

- 6.5.1 commenced using the Property for a purpose other than as agreed in the relevant agreement; or  
6.5.2 further Disposes of the Property,

unless otherwise determined by the Municipal Manager or the Council (as the case may be).

- 6.6 If the Municipality appoints a private sector party or organ of state through a competitive bidding process as the service provider of a commercial service, the compensation payable to the Municipality in respect of the Disposal/Letting of Property as an integral component of the performance of that commercial service to that service provider, shall reflect fair market value.

## **EXTRACTS OF REGULATIONS OF THE MATR**

### Extract of Regulation 12

#### ***“Transfer or disposal of non-exempted capital assets to be in accordance with disposal management system***

12. (2) *The disposal management system of a municipality or municipal entity does not apply to the transfer of a non-exempted capital asset 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 capital asset as an integral component of the performance of that municipal service to that service provider; or*
- (b) *the municipality or municipal entity -*
- (i) *appoints a private sector party<sup>1</sup> or organ of state through a competitive bidding process as the service provider for the performance of a commercial service<sup>2</sup>; and*
  - (ii) *transfers the capital asset as an integral component of the performance of that commercial service to that service provider.”*

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<sup>1</sup> If another municipality, municipal entity or other organ of state is the preferred service provider, any transfer of assets is regulated by Chapter 3. See regulation 20(1)(a).

<sup>2</sup> This includes any independent contractor which performs a task for the municipality or municipal entity, e.g.: a collection agent or a person servicing the equipment of the municipality or entity.

Extract of Regulation 41(2)

***“Granting of rights to use, control or manage municipal capital assets to be in accordance with disposal management system***

41. (2) *The disposal management system of a municipality or municipal entity does not apply to the granting of a right to use, control or manage a capital asset 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) 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*
  - (iii) grants that service provider the right to use, control or manage that capital asset as an integral component of the performance of that municipal service;*
- (b) the municipality or municipal entity -*
  - (i) 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*
  - (ii) grants that service provider the right to use, control or manage that capital asset as an integral component of the performance of that commercial service;*
- (c) the right to use, control or manage that capital asset is granted as part of a reorganisation of powers or functions between a parent municipality and its municipal entity;*
- (d) the right to use, control or manage that capital asset is granted in circumstances referred to in section 110(2) of the Act; or*
- (e) the right to use, control or manage that capital asset is granted to another organ of state in any other circumstance not provided in paragraph (a) to (d) provided that the capital asset is determined by resolution of the council of the municipality or of the parent municipality of the municipal entity to be surplus to the requirements of the municipality or entity.”*