

SWELLENDAM MUNICIPALITY



LAND DISPOSAL POLICY, 2018

Approved by Council under item A24 on 27 March 2018

MANAGEMENT, ADMINISTRATION, PROCUREMENT AND DISPOSAL

OF

IMMOVABLE PROPERTY

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PART A

1. PREAMBLE

WHEREAS Section 14 of the MFMA provides for the disposal of municipal capital assets; and

WHEREAS the Municipal Asset Transfer Regulations, 2008 support and give effect to the provisions of Section 14 of the MFMA; and

WHEREAS Regulation 40 of the Supply Chain Management Regulations, 2005 stipulates that a municipality must have an effective system in respect of disposal management for the selling and lease of assets;

NOW THEREFORE the Swellendam Municipal Council adopts the Land Disposal Policy as set herein.

2. ALIGNMENT WITH THE MUNICIPALITY'S STRATEGIC OBJECTIVES AND GOALS

- This policy endorses the strategic objectives and goals of the IDP and the Service Delivery and Budget Implementation Plan in terms of Local Economic Development, and aims to afford all sectors of the local community the opportunity to participate in the mainstream of economic activities.
- The municipality has a core responsibility to acquire and avail land and buildings, in the first instance, for use by its municipal business units for the purpose of maintaining and expanding municipal infrastructure, and to ensure service delivery and social and economic development, coupled with spatial integration and environmental sustainability.
- Immovable assets not required for these purposes may, with due regard for future municipal needs, be considered redundant.
- The municipality has the responsibility to manage, alienate, lease and dispose of its immovable assets and rights therein and thereto for the benefit of the entire community. The goal should always be to act in the best interests of residents and taxpayers.
- The management of the municipality's immovable assets is not profit oriented, but for the benefit of the community and therefore the municipality cannot follow the processes and systems applied by a private enterprise.
- It therefore stands to reason that the municipality's Immovable Asset Management Policy supports the principles and values of economic development, social, economic and environmental sustainability, land use, housing, social and community infrastructure, physical infrastructure, biodiversity protection, culture, recreation and sport.
- Creating job opportunities with a view to the growth of the gross domestic product.
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3. MARKET FORCES

It is acknowledged and accepted that market forces will be the starting point regarding any immovable asset transaction, yet the municipality concurs that there are inequalities of the past that need to be redressed and the principles to address these are also embodied in the policy.

4. RESTRICTIONS AND DECLARATION OF INTERESTS

- Political office bearers and officers and officials in the municipality's service may not make offers on immovable assets that the municipality wishes to dispose of or lease, unless such immovable assets are disposed of in a competitive and transparent process and the interested office bearer, officer or official concerned was not involved in the process prior to the disposal and he/she declared his/her interest in advance.
- Political office bearers and officers and officials in the municipality's service who in any respect, whether with the disposal or lease or with the acquisition of immovable property or rights therein, have any direct or indirect interest, must declare his/her interest in writing to the Municipal Manager and if the Municipal Manager has a direct or indirect interest, to the Mayor. Failure to declare such interest will result in the cancellation of the proposed transaction and the political office bearer or officer or official concerned will be responsible for the wasted costs.
- No official in the municipality's service may unfairly influence the panel involved in assessment or adjudication and may not act in a discriminatory manner or in breach of the policy.

5. GENERAL PRINCIPLES

The following principles govern the management and disposal of immovable property:

- The promotion of social integration
 - The elimination of spatial inequalities
 - The promotion of economic growth
 - The building of strong, integrated and dignified communities
 - The provision of access to housing, services, facilities and transport
 - The provision of opportunities for job creation;
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- Addressing poverty; and
 - • Redressing the imbalances of the past.
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6. APPLICATION

The policy is applicable to:

- the acquisition or lease of immovable property by the municipality;

- the alienation or disposal of immovable property by the municipality;
- the lease of immovable property by the municipality; and
- encroachments for the use, control or management of immovable property, for example for servitude, right of way, encroachment or other rights in terms of an agreement.

7. LEGALITY

The policy is based on the provisions of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (hereinafter referred to as the MFMA) and the Asset Transfer Regulations, 2008 (hereinafter referred to as the Regulations) and the Council's by-laws regarding the management and administration of immovable property and the Land Use Planning By-law.

Section 14 of the MFMA defines the broad framework within which municipalities may deal with immovable assets, including property. The regulations and the by-laws regulate the matters described in paragraph 1.

The regulations distinguish between exempt property and non-exempt property. Exempt property is property transferred to the state or to another local authority on one of the following conditions:

- Revision of the municipality's service delivery strategies in terms of Chapter 8 of the Local Government: Municipal Structures Act, and the designation of another government institution to deliver the service.
- Reorganisation of the functions and powers between the municipality and a municipal entity.
- The designation in terms of legislation that the function must be performed by another government institution.
- Transfer of housing or land to the state in cases where the needs of the poor play a role in terms of a provincial or national housing policy.
- If the transfer is required by national legislation and the national legislation determines the conditions.

Non-exempt property is subject to a resolution by the municipal Council that the property is not required for the delivery of a minimum level of municipal services and that the property may be alienated or disposed of, subject to Council's consideration of its fair market value as well as the community value to be received on alienation or disposal.

8. DISPOSAL MANAGEMENT PRINCIPLES

In terms of section 14(5) of the MFMA, the process regarding the disposal of municipal immovable assets must be fair, equitable, transparent, competitive and consistent with the supply chain management process.

PART B

1. PREAMBLE

- 1.1 To provide a policy framework for the management of the municipality's immovable assets; to establish criteria for determining the different categories of immovable property in order to regulate its acquisition, lease, use, sale and acquisition; to establish criteria for the regulation and coordination of transactions; to facilitate the establishment of appropriate private-public partnerships to develop properties according to categories.
- 1.2 In the exercise of its powers, duties and functions, Council has the right to acquire, hold, benefit from and alienate immovable property.
- 1.3 Council is the custodian of the immovable property of the municipality and is responsible for the administration thereof.
- 1.4 Council realises that immovable property held by it which is not intended for or already used for public purposes and/or in the public's interest, should be dealt with in a manner that will ensure the greatest benefit to Council and the community.

2. GENERAL PRINCIPLES

- 2.1 Council may acquire, use, benefit from, alienate or lease or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the municipality unless it is precluded from doing so by law or the conditions under which such immovable property was acquired by the municipality.
- 2.2 Immovable property is sold/leased at market value, except in circumstances described in paragraph 7, provided that the immovable property referred to in the Housing Act, Act 107 of 1997 is sold/leased in terms of the provisions of the Act.
- 2.3 All transactions relating to the sale or lease of municipal property must be considered in accordance with this policy framework and within the limits and stipulations of the MFMA, regulations and by-laws, and before any action takes place, Council must resolve that the relevant immovable property is not required for the delivery of a minimum level of municipal services and that the property can be disposed of or leased.
- 2.4 Disposals and leases must be effected by means of public competition through tenders, auctions or calls for proposal, except in the instances detailed in paragraph 7, and the highest offer must as a rule be accepted, provided all terms and conditions have been met. In assessing tender documents, Council will take cognisance of the total cash value of the packages offered by the tenderers, where such packages are permissible in terms of the conditions of the tender. In other words, where the actual amounts tendered are roughly similar but a particular tenderer, for example, also offers to make improvements to the property, the cash value of such improvements must also be taken into consideration when the highest tender is determined. Where immovable property is disposed of or leased for some or other development project, including a business project, but the specific type of

development Council is prepared to allow is of major importance, Council may call for development proposals, including a monetary offer. In such a case the price offered for the immovable property by the developer will only be a part of the total package. Should the municipality consider it desirable not to accept the highest tender or decide to accept a particular development proposal or package deal in which the amount tendered is not the highest offer, the reasons for this decision must be fully set out and recorded in the minutes of the Council and/or committee meeting concerned.

- 2.5 The property management directorate determines the market value of the selling prices or rentals, unless circumstances warrant the use of an independent valuer.
- 2.6 Council's immovable property must be inspected at reasonable intervals to ensure compliance with the terms and conditions of the agreement of sale or lease.
- 2.7 The lease of sports facilities and other public facilities to sports councils, sports federations and other similar bodies, and other public facilities takes place in accordance with the municipality's policy on sports facilities and public facilities.
- 2.8 The out of hand sale of immovable property to social care organisations is permitted. The price is set at between 10% and 25% of the market value, subject to a reversionary clause registered against the title of the property.
- 2.9 The out of hand sale of immovable property to social care organisations is permitted and the rental amount is at the rate determined by Council.
- 2.10 The out of hand sale or lease of non-viable closed streets, lanes, public open spaces and portions of the municipality's surplus land to adjacent owners of commonages for small farmers and the less privileged, and business even for first buyers in the less privileged communities, is permitted and such land is sold or leased at market value and/or such price or rental as determined by Council.
- 2.11 The out of hand lease of land for gardening purposes is permitted and rental is charged at the tariff determined by Council.
- 2.12 The out of hand lease of land for outdoor seating at a restaurant to the restaurant owner is permitted and the rental is determined by Council.

3. CONDITIONS OF SALE

- 3.1 All costs pertaining to a transaction, such as the survey, rezoning, subdivision, consolidation, advertising, relocation or provision of services costs are borne by the applicant, provided that Council may waive its right to claim those costs if the reason for the sale is to rid Council of a burden to maintain the property or exercise control over it.
- 3.2 All statutory requirements must be complied with.
- 3.3 Where applicable, existing services are secured by means of the registration of a servitude in favour of Council. The costs thereof shall be for the account of the applicant.

- 3.4 Where applicable and where possible, the portion of the immovable property sold to an adjacent owner must be rezoned, closed and consolidated with the applicant's property.
- 3.5 When immovable property is sold, development must commence, if applicable, within one (1) year or such longer period as may be agreed to from the date of transfer or possession, or in accordance with the provisions of the deed of sale or the development programme submitted by the purchaser, and be completed in accordance with the provisions of the deed of sale or the development programme. A suspensive condition must be included in the sale agreement to provide for forfeiture in the event that the development has not been commenced within the required timeframe. Council furthermore reserves the right to impose such conditions as deemed necessary without limiting its rights to liquidated damages and reversionary clauses.
- 3.6 A reversionary clause is applicable to immovable property transactions where property is sold below market value or in instances where the conditions of sale are not met.
- 3.7 Immovable property may, except with prior approval, be used only for the purpose approved by Council and for purposes regulated by town planning schemes.
- 3.8 All sales agreements, where applicable, are finalised and concluded within 60 days from the date of Council's official request. Failure to comply shall cause the approval for the sale to lapse. A suspensive condition clause is applicable to all transactions that are subject to the approval of a rezoning, subdivision, consolidation, etc.
- 3.9 No application is processed unless the applicant has confirmed in writing that the applicant will bear all costs, where applicable, such as the legal, survey, rezoning, subdivision, consolidation, advertising, relocation or provision of services costs, and a deposit according to the prescribed rate has been paid to cover additional costs.

4. CONDITIONS OF LEASE

- 4.1 No application is processed unless the applicant has confirmed in writing that the applicant will bear all costs, where applicable, such as the legal, survey, rezoning, subdivision, consolidation, advertising, relocation or provision of services costs, and a deposit according to the prescribed rate has been paid to cover additional costs.
- 4.2 The following deposits and/or adequate/equivalent security/guarantee are applicable to a lease where the rental is based on market value:
- i. A deposit equal to two (2) months' rental for commercial transactions.
 - ii. A deposit equal to one (1) month's rental for residential and social services transactions; provided that the credit rating is satisfactory. If not, the deposit can be increased.
 - iii. No deposit in respect of gardening and parking leases other than commercial parking leases.

- 4.3 No immovable property is subleased, ceded or assigned without the prior approval of Council.
- 4.4 An owner of immovable property who leases an adjacent municipal immovable property may be substituted by his successor in title for the duration of the remainder of the lease period as deemed necessary, on the same terms and conditions and/or additional terms and conditions.
- 4.5 Rental escalates annually as follows:
- a) Below market-related, an annual escalation of 10%;
 - b) Market-related rent, an annual escalation of 7.5%.
- 4.6 The lessee is liable for the payment of municipal rates and service charges.
- 4.7 The lease of lanes, public open spaces and road reserves is subject to the following:
- i. Closing off/securing, if required by Council, must be to Council's satisfaction.
 - ii. Costs for the relocation or installation of services, where required, must be paid by the lessee.
 - iii. Securing of servitudes.
- 4.8 Lessees indemnify Council against any possible claims arising from the lease or use of the immovable property.
- 4.9 Where land is leased for development, such development must commence, if applicable, within one (1) year or such longer period as may be agreed to from the date of occupation or in accordance with the provisions of the lease agreement or the development programme submitted by the lessee, and be completed in accordance with the provisions of the lease agreement or the development programme. A suspensive condition must be included in the lease agreement to provide for forfeiture in the event that the development has not been commenced with. Council further reserves the right to impose such conditions as may be deemed necessary without limiting its rights to liquidated damages and reversionary clauses.
- 4.10 Save with prior approval, the property may only be used for the purpose for which it was leased and purposes regularised by town planning schemes.
- 4.11 The lease agreement, where applicable, is finalised and concluded within 60 days from date of Council's official request. Failure to comply with this provision results in the lapse of the approval. The applicant forfeits his/her deposit and is held liable for costs that exceed the deposit amount.
- 4.12 Council officials are at all reasonable times entitled to enter or inspect the immovable property.
- 4.13 All agreements contain a clause which requires that all improvements made by the lessee and which Council wishes to retain shall revert, free of charge, to Council once the lease

period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled.

4.14 Lease of municipal commonage land for small scale farming purposes

- 4.14.1 The Council may lease land to small scale farmers at a rate below market related value in order:
- a) To open opportunities for small scale farming to previously disadvantaged individuals residing within the Swellendam municipal area; and
 - b) For empowerment in order to compete in a closed market with commercial farmers; and
 - c) To enhance the principles of poverty alleviation and local black economic empowerment.
- 4.14.2 As and when land becomes available the Mayoral Committee will:
- a) Decide to invite applicants by public advertisement; and
 - b) allocate available land by the fair division thereof amongst applicants to ensure equity; and
 - c) in order to promote sustainability, take into account the extent of the farming activities of individual small scale farmers applying for the land.
- 4.14.3 The process will be fair, equitable, transparent and competitive and therefore applications will be advertised for public comment and the Mayoral Committee will consider inputs from the public before a final decision is made.
- 4.14.4 The “Provision for rental below market related value will only be available to poor people who are not gainfully employed and land under these circumstances can therefore be leased at a reduced rental amount of R5.00 plus VAT per hectare per year and for a maximum term of 9 years and 11 months.
In order to define poor people for the purpose of this classification, the municipal register on Indigent and poor households will be used and only persons registered as such, will qualify.
Should a poor person’s circumstances change during the term of the lease, he/she must report it to the municipality in writing and the Mayoral Committee will then consider amending the rental value to be in line with a market related rental.
A person failing to inform the municipality in writing of same will face the risk of the cancellation of the lease agreement and be placed on a black list forfeiting future renting from the municipality.”
- 4.14.5 When cancellation takes place and there is no provision to cede the lease agreement to a close family member, the process above must be repeated.

- 4.14.6 No councillors or officials may participate.
- 4.14.7 Family members of councillors and officials must declare relationship during application process.
- 4.14.8 Should a beneficiary become elected as a councillor, or appointed as an official, at any time during the lease period, the lease will terminate within sixty days of election or appointment.
- 4.14.9 On expiry of the lease period, it may be renewed taking into account the circumstances of the lessee as far as the activities of the farming practices are concerned and to promote sustainability.
- 4.14.10 The tenants shall be responsible to erect a proper fence on the land to the satisfaction of the Council and to maintain the fences concerned in a proper state of repair and to maintain contours on the land as required by the Director: Community Services and Director: Infrastructure Services.
- 4.14.11 The lease is subject to the maintenance and / or formalization of any existing right of way over the land.
- 4.14.12 The grounds must be utilized within 2 years or farming activities and on failure of which, the Council has the right to reclaim the unused land and assign it to another individual under the same conditions.
- 4.14.13 No subletting of land or portions thereof may take place.
- 4.14.14 The land may only be used for agricultural activities and no occupation of a property is permitted.
- 4.14.15 Existing municipal services on the land must be protected by the registration of servitudes and / or related arrangements.
- 4.14.16 Surveys of land must take place as appropriate, to formalize camps for rent.
- 4.14.17 The lessee is responsible to provide water and other essential services needed for farming purposes.

5 LEASE PERIODS NOT EXCEEDING 12 MONTHS

- 5.1 The lease of immovable property for periods not exceeding twelve months without an option to renew:
 - a) Where applicable, the general conditions set out in paragraph 4 are applied.
 - b) Immovable property leased for short-term periods, i.e. 14 days for circuses, etc. is subject to the following:

- i. Where required, the applicant is to provide or arrange with Council at its cost for the provision of services such as refuse, water, electricity and ablution facilities.
- ii. The applicant must return the land in its original condition.
- iii. Rental is charged at the prescribed tariff.
- iv. The applicant indemnifies Council against any claims against Council.
- v. Applicants undertake in writing to compensate Council for any damages caused to Council property which may arise from any circumstances whatsoever.

6 ENCROACHMENTS, STRUCTURES AND OTHER RIGHTS

6.1 Council may, subject to such conditions as it may deem fit, including the payment of prescribed rental –

- 1. permit the erection or retention of a veranda, balcony, sign, name board or similar structure or device which projects or extends into or over any public place or public street (hereinafter referred to as a “projection”), provided that –
- 2. the erection or retention of such projection is not permitted on the level of more than one floor;
- 3. no such projection will be wholly enclosed to a height of more than 1,5 m from the ground level thereof; and
- 4. no such projection will be partially enclosed to a height of more than 1,5 m from the ground level thereof, except with the prior written approval of Council and subject to such conditions as Council may impose; or
- 5. Where the erection or retention of a building or structure that projects over or extends into, over or under any public place or public street (hereinafter referred to as a “projecting structure”) is not permitted in terms of paragraph (a), permit such erection or retention where the land compromised in such place or street –
 - i. is not owned by the municipality if, in the opinion of Council, such projecting structure will not or does not impede, restrict or interfere with the construction, maintenance or use of such place or street; or
 - ii. is owned by the municipality, if, in the opinion of Council, such projecting structure is erected as part of the development of property in accordance with a provision contained in Council’s town planning scheme that applies specifically to such property.

6.2 When municipal immovable property under the control or management of Council is

encroached upon, Council may take such steps as may in the opinion of Council, be necessary to remove or regularise such encroachment.

- 6.3 Council may reduce the extent of a public place or public street which is encroached upon by the extent of the encroachment or by such greater extent as may, in its opinion, be desirable.

6.4 MANNERS OF ALIENATION/DISPOSAL

- 6.4.1 After deciding on the disposal of a property and if it is decided that the property should be alienated, the manner of alienation must be determined. Considering the nature of the asset and the purpose for which it is to be disposed of, the following manners of disposal may be considered:

- a. Competitive tender process (formal process):** A competitive process through the formal tender process is dealt with by the supply chain management process.
- b. Public auction:** The disposal or lease by means of public auction is an alternative to the formal tender process and is particularly useful in the case of properties that are developed and offered for sale in large numbers. It is also advisable where sought-after property is to be disposed of. The decision to dispose of property by public auction must be in writing and must include the following:
 - i) The reasons justifying the property being offered for sale by public auction.
 - ii) The reservation price, if any, for the auction.
 - iii) The appointment of an auctioneer, which must be dealt with by the supply chain management process, and the auctioneer's commission must be paid by the purchaser and not by the municipality.

- 6.4.2 The agreement of purchase and sale or lease must be available at the auction.

- 6.4.3 The bid must be awarded to the highest bidder, provided that the reservation price has been reached.

- 6.4.4 The agreement must be concluded and signed immediately.

- 6.4.5 The terms and conditions for each auction will be determined individually, taking into account the specific features and characteristics of the property concerned.

6.4.6 CLOSED TENDER

If a non-viable property has more than one adjacent owner and shows the potential to be consolidated with one or more of the adjacent properties, the property may be sold by means of a closed tender.

6.4.7 UNSOLICITED BIDS

Unsolicited bids are often the order of the day. Such bids may be considered in exceptional cases only and may include property development proposals, land sales and leases.

6.4.7.1 The following principles will apply in the event of unsolicited bids:

- a. Bids received will be analysed and evaluated by the Municipal Manager.
- b. Realistic proposals will be advertised in the local media in order to elicit competitive proposals or objections from the public.
- c. If the advertisement elicits a response from the market, competitive proposals will be requested by the supply chain management process.
- d. The final lease or purchase agreement will be submitted to Council for approval.

6.4.8 SELLING PRICES AND RENTAL VALUES

- a. Property may be sold or leased at fair market-related prices only, unless the plight of the poor or the public interest or local economic development goals dictates otherwise on the economic and community value that the municipality will receive.
- b. In respect of certain categories of properties, the municipality may determine lower than market-related selling prices and rental amounts. These include, but are not limited to, non-profit organisations, sports clubs, non-government organisations, bona fide small farmers, business properties for first buyers from the previously disadvantaged community.
- c. Market-related selling prices will be determined by obtaining at least two valuations from independent sworn valuers in cases of sought-after properties or development-oriented transactions. In general, it will be sufficient to obtain one valuation from an independent sworn valuer, but the municipality may decide to obtain a second valuation.
- d. Rental values will be determined by obtaining a valuation from an independent sworn valuer, but the municipality may decide to obtain a second valuation.

6.4.9 APPOINTMENT OF PROPERTY AGENT

The Accounting Officer may appoint a property agent in terms of the supply chain management process to market municipal property. No commission may be paid to such agent by the municipality. Agent's commission must be recovered by the agent of the purchaser of the property.

7. OUT OF HAND SALES AND LEASES

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

The reservation price and/or the selling price or the price for lease must be determined in such a way that it corresponds with a reasonable market value and must include the recoverable development costs such as municipal services, advertising and survey costs.

- 7.2 Immovable property may be sold or leased out of hand to social care organisations, provided that where sales are transacted below market value, the sales to such organisations will be subject to a suitable reversionary clause.
- 7.3 Closed streets, lanes and public open spaces may be sold or leased to adjacent owners, provided that written notice has been served on all adjacent owners and all comments and objections have been considered.
- 7.4 Immovable property may be sold or leased out of hand to other spheres of government and other local authorities. All such immovable property transactions, excluding exempt properties, must be considered on a market-value basis.
- 7.5 Industrial land may be sold or leased out of hand where supply exceeds demand, provided that the market value principle is applied in accordance with the prices determined by the municipality.
- 7.6 Immovable property may be sold out of hand to existing lessees who have leased such premises for five years or longer, on condition that the immovable property is sold at market value and the public has been given notice and all comments and/or objections received have been considered.
- 7.7 Immovable property may be sold or leased out of hand in exceptional cases where Council is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community and Council, and where it is not in breach of any conditions set out in this policy and where the conditions are not in breach of any legislation. In such cases Council is required to record in the minutes of the Council meeting concerned their full reasons for preferring such out of hand sales or leases to those by public competition.
- 7.8 Odd lots of land that can be of no practical use to any other person may be leased or sold out of hand to any applicant.
- 7.9 Immovable property acquired by Council for public purposes or in the public's interest may be leased out of hand to any applicant for temporary use until such time as the property is required for development.
- 7.10 Houses may be sold or leased out of hand to employees of Council, on condition that rentals comply with any policy laid down and that selling prices are market related.
- 7.11 Lease contracts with existing lessees of immovable property may be renewed by the competent delegated authority.
- 7.12 Immovable property for business or industrial purposes may in the following cases be sold out of hand at lower than market value prices:

- Promotion of social integration;
- Elimination of spatial inequalities;
- Promotion of economic growth;
- Building strong, integrated and dignified communities;
- Provision of access to housing, services, facilities and transport;
- Provision of opportunities for job creation;
- Creation of opportunities for the previously disadvantaged of the community;
- Eradication of poverty; and
- Redressing the imbalances of the past.
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7.12.1 In cases such as these, Council may consider and accordingly adjust the fair market value, and reduce or write-down the development contributions.

7.12.2 The following factors must jointly be taken into account in order to qualify:

- Individuals who own only one residential property.
- Individuals who are not already involved in the mainstream of the economy and thus do not own a business, whether or not the property on which it is operated is in terms of a lease contract.
- Individuals whose business income is below R150 000,00 per annum.
- Individuals whose combined monthly household income is below R10 000,00 per month.
- Unless the supply chain management process is followed, the disposal or lease of any property in terms of the paragraph will be subject to the details of each individual case being advertised, and that any objections and/or comments received must be considered by Council before a final decision is made.

7.12.3 Properties disposed of in terms of the paragraph will have a preemptive right clause of eight (8) years and a suitable reversionary clause in the event that the property is no longer utilised for the purpose for which it is disposed of.

7.12.4 In the case of disposal, the transfer must take place within six (6) months, failing which purchase agreement will lapse.

7.12.5 The municipality's aid is limited to the purchase price, rental amount and relief in respect of bulk service charges. All other costs, including connection costs for services and the costs of transfer and transfer duty, will be borne by the purchaser.

7.12.6 The purchaser is exempt from availability fees for the first twelve (12) months after transfer.

7.12.7 If the development does not take place within twelve (12) months from the date of transfer, the normal availability fees become applicable and the property will be taxed at the highest of the taxable value or as if a building of R100 000,00 is built thereon.

8. SOCIAL CARE USES

- 8.1 Social care is defined as services provided by registered welfare, charity, non-profit, cultural and religious organisations.

Social care includes but is not limited to the following uses:

- 8.1.1 A place of worship to the extent and for that portion of the facilities that are used for religious gatherings by, and which provides social/pastoral/welfare care and support to worshippers and the broader community.
 - 8.1.2 Childcare facilities in so far as they contribute to the functioning of multipurpose childcare facilities and are operated on a non-profit basis.
 - 8.1.3 Retirement homes for that portion of the building or facilities that are available for general public use at subsidised or nominal prices.
 - 8.1.4 Schools or centres that are utilised as homes for the disabled and incapacitated persons.
 - 8.1.5 Non-profit rehabilitation centres.
 - 8.1.6 Houses or centres for the poor, abused or needy people.
 - 8.1.7 Organisations for homeless and elderly people.
 - 8.1.8 Youth activity centres (such as the Girl Guides and Voortrekkers).
 - 8.1.9 Facilities for the accommodation, care and burial of animals.
 - 8.1.10 Cemeteries, funeral parlours and crematoriums.
- 8.2 Factors taken into account in the selection and allocation of immovable property for places of worship.

8.2.1 Requirements to qualify for the allocation of premises

Proof of membership of at least one hundred and fifty local persons (residing) in the municipal area or town concerned) who has been a member of the relevant Church / Religious Society for at least one year

- a) Proof of the constitution or memorandum of incorporation of the church/ religious association.
- b) Proof of registration of the church/ religious association with a recognised ecumenical body. Associations that do not have ecumenical registration will not qualify for the allocation of an erf.

8.2.2 Conditions for allocation

- a) Only one premises per town is allocated to a specific congregation of a church/ religious association.
- b) The premises allocated must be developed for use within sixty (60) months of transfer of the premises in the name of the religious association. A building plan for the development of the premises must be submitted to the municipality for approval within twelve (12) months of transfer of the premises. Construction of an approved structure must commence within twelve (12) months after approval of a building plan and be completed for use within the period of sixty (60) months permitted and calculated from the date of transfer of the premises. In the event of any failure the premises will revert to the municipality for reallocation.
- c) Premises are allocated for the sole purpose of constructing a place of worship as primary use. Secondary uses for non-profit community projects are permissible from the premises concerned.
- d) Transfer of premises allocated must be transferred within three (3) months of the notice of allocation, failing which the offer will lapse.

8.2.3 Selling price

- a) Selling will take place in a manner that ensures equity and transparency. Provision is made for the following actions and procedures:
 - Invitations are published via public notice that invite interested churches/ congregations/ religious associations to register their details and intention to acquire property on the municipal database.
 - The registered details of churches/ congregations / religious associations are evaluated and updated annually to determine which institution(s) should receive preference in the allocation of available premises.
 - The preferential position of churches/ congregations/ religious associations on the database is determined annually by evaluating the:
 - number of registered and verified members of the church/ congregation/ religious association (the more members, the higher the preferential position); and
 - activities of the church (number of services held / poor relief).
- b) The purchase price of premises is determined as the once-off sale of premises per individual church/ congregation of a church/ religious association at a discounted price calculated as 10% (discount of 90% is granted) of the average of two fair market value certificates. The following specific conditions of sale will apply to the purchaser:

- A pre-sale condition will be applicable until a church building is erected on the premises as per the approved building plan.
 - The premises and the building thereon may only be utilised for religious purposes. If it is utilised for other purposes, the premises will revert to the municipality for reallocation to another church association.
- c) The payment of the purchase price will be made on transfer and all costs relating to the advertisement, survey, rezoning and transfer will be for the purchaser's account.
- d) Church premises must be properly fenced within three (3) months after allocation/transfer.
- e) A structure must be erected within twenty four (24) months, and must provide seating for at least one hundred and fifty members of the congregation.

9 ACQUISITION OR PROCUREMENT OF IMMOVABLE ASSETS

- 9.1 The municipality may acquire or procure immovable assets or rights in immovable assets within or outside its municipal area by purchase, expropriation, exchange, donation, gift or otherwise, subject to the terms of the policy.
- 9.2 Expropriation must take place in terms of the Expropriation Act, 1975 (Act 63 of 1975) and only in the event where the land is required for public purposes or in the interest of the public.
- 9.3 **PRINCIPLES:**

The following principles endorse the acquisition or procurement of immovable assets:

- (a) The Integrated Development Plan and the strategic objectives and goals of the municipality.
 - (b) Corporate and services plans.
 - (c) Forward planning and spatial planning initiatives.
- 9.4 The Department Corporate Services is responsible for the acquisition or procurement of immovable assets and/or rights therein on behalf of all business units of the municipality.
- 9.5 Business units must annually identify needs for the acquisition or procurement of immovable assets and/or rights therein during the IDP review process, and incorporate such needs in the IDP and budget. Such immovable assets must be in accordance with an approved municipal project.
- 9.6 The purchase costs for the acquisition of immovable assets or rights therein will be calculated at a negotiated price at fair market value with the owner from whom it is to be

acquired or procured. The fair market value will be calculated in accordance with at least two valuations obtained by the Director Corporate Services from sworn valuers in terms of the supply chain management process.

- 9.7 In the event of expropriation, the costs will be calculated in terms of the legal provisions regarding expropriation.
- 9.8 Once the property has been acquired, it will be used for the purpose for which it was acquired and if not required immediately, be placed in reserve for later use.

9.9 ASSESSMENT

- 9.9.1 Before deciding to acquire immovable assets, the Municipal Manager must conduct or arrange for a detailed assessment to be conducted to ensure that:
- a. the service delivery needs of the municipality will be best served with the acquisition;
 - b. it is in line with the broad needs and goals of government;
 - c. the spending of public funds is justified and approved; and
 - d. it is in line with the spatial planning objectives and goals.
- 9.9.2 The Municipal Manager must ensure that land acquisition for infrastructure projects complies, where applicable, with regional plans, government infrastructure plans, municipal infrastructure and master plans, and any other relevant plans.
- 9.9.3 The Municipal Manager must take the following into account:
- (a) The reason why the proposed premises best serve the municipality's needs
 - (b) The municipality's strategic land management plan
 - (c) Sources of finance and value for money
 - (d) Alternative service delivery options
 - (e) Sharing of government resources
 - (f) Method of acquisition
 - (g) Value of the land
 - (h) Consultation with stakeholders
 - (i) Availability of surplus government land
 - (j) Risks related to the proposed transaction
 - (k) Land restrictions such as cultural or heritage issues and servitudes

9.9.4 The department identifying the need must do the assessment to determine the suitability of the premises and compile an evaluation criteria for the purpose. This may include:

- (a) Public transport needs
- (b) Potential to address future service needs
- (c) Local support services
- (d) Physical premises needs
- (e) Extent of the land in relation to service delivery strategies
- (f) Financial benefits
- (g) Municipal priorities
- (h) Other future service delivery needs in the vicinity of the premises, taking into account the possibility of combining or sharing services
- (i) Consideration of the land audit and availability of land in terms of the audit

9.10 METHODS FOR THE PROCUREMENT OF IMMOVABLE ASSETS OR RIGHTS THEREIN

9.10.1 The municipality can procure land by the following methods:

9.10.2 Open market: If a particular area or place or suitable place or area is preferred. Land can be procured in this way by means of a public auction or privately negotiated transaction.

9.10.3 Private negotiation: If specific premises are earmarked. This method can be used where the land has a clear title or a clear title is easily obtainable and the owner is willing to accept a reasonable offer.

9.10.4 Expropriation: In the event where the procurement by means of an agreement was unsuccessful and the procurement of the specific premises is essential for service delivery.

9.11 COMPULSORY CONSULTATION

9.11.1 The municipality may not purchase land before the municipality's intention has been advertised and all objections and/or inputs received have been considered.

9.11.2 All material information relating to the matter must be disclosed in the advertisement, which material information could be made available for inspection in a document on the municipal website or at the municipal offices. The following information must be available for public inspection:

- (a) A description of the property, title description, street address and extent

- (b) The contracting parties
- (c) Reasons for the purchase
- (d) The purchase price or rental amount
- (e) The market value of the land
- (f) How the transaction will be financed
- (g) Whether the transaction has been included in the budget
- (h) Whether any alternatives have been considered

9.12 If justifiable and reasonable, the Municipal Manager may at his own discretion deviate from any or all of the above provisions. If the Municipal Manager considers it reasonable and just to deviate, he must take the following factors into account:

- (a) The goals of the proposed transaction
- (b) The nature, purpose and reason for making such a decision
- (c) The likely impact of the decision
- (d) The urgency to make the decision and the urgency of the matter
- (e) The need to promote effective and sound governance and administration

9.13 APPROVAL PROCESS

The Director Corporate Services will ensure that a motivated report is prepared for consideration by the competent authority that has to consider and decide on the matter. The report will be a fully motivated report that includes all material aspects.

10. MUNICIPAL LAND AUDIT AND REGISTER

- 10.1 The Department Corporate Services must maintain a detailed land register (Property Register) that contains the details of all municipal fixed assets.
- 10.2 The Property Register must indicate the value of each property for insurance purposes.
- 10.3 The Finance Department is responsible for arranging the insurance.
- 10.4 The Property Register will be endorsed by a land audit that must be conducted every five years, subject to the budget and as prescribed in the strategic immovable property management plan.