



KAAP AGULHAS MUNISIPALITEIT  
CAPE AGULHAS MUNICIPALITY  
U MASIPALA WASECAPE AGULHAS

# **CAPE AGULHAS MUNICIPALITY**

## **Land Disposal Policy**

Issued in terms of section 14 of the Local Government  
Municipal Finance Management Act, 2003

**Adopted by the Council on 10 May 2011 per resolution 85/2011**  
**Reviewed by Council on 31 August 2011 per resolution 160/2011**

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**DOCUMENT DEFINITION**

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**Date**

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**Summary**

This document is the Land Disposal Policy applicable to the Cape Agulhas Municipality

**Signature**

**Date:**

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**MUNICIPAL MANAGER**

**Approved by the Council**

**Date:**

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**Resolution**

**Effective date**

.....

**Next revision date**

.....

**AMENDMENT HISTORY**

No	Amendment reference	Effective date	Chapter	Paragraph	Short description
1					
2					
3					
4					
5					
6					

**PART 1: PREAMBLE**

- 1.1. **WHEREAS** section 14 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) – [MFMA] provides for the disposal of municipal capital assets ; and
- 1.2. **WHEREAS** the Municipal Asset Transfer Regulations – [MATR] was issued in 2008 as per the MFMA to augment the aforementioned provisions; and
- 1.3. **WHEREAS** a Municipal Land Disposal Policy will give effect to the above and reflect the methodology and procedures for the sale and letting of various types of properties In order to make available economic opportunities in the Municipality for local investors; and
- 1.4. **NOW THEREFORE** the Cape Agulhas Municipal Council adopts the Municipal Land Disposal Policy as set out in this document.

**PART 2: PURPOSE**

- 2.1. The purpose of the Policy is to provide the methodology and procedures for the sale and letting of various categories of municipal properties in order to make available economic opportunities in the Municipality for local investors.

**PART 3: ALIGNMENT WITH THE MUNICIPALITIES' STRATEGIC GOALS AND OBJECTIVES**

- 3.1. This Policy supports the following municipal strategic directions drawn from the Integrated Development Plan [IDP] and Strategic Development Business and Implementation Plan [SDBIP]:

- IDP: “ ..... ”.
- SDBIP: “ ..... ”.

**PART 4: PRINCIPLES, VALUES AN ISSUES**

- 4.1. The principles guiding this Policy are to promote:
  - (a) Efficiency thereby
    - reducing unnecessary bureaucratic red tape
    - timely decision-making
    - proper record systems
    - economies of scale
  - (b) Effectiveness
    - quality of decisions
    - public benefit
    - cost-benefit analysis
    - decision risk
  - (c) Sustainability
    - continuity
    - financial viability
    - durability
    - affordability
  - (d) Democracy
    - consultation
    - participation
    - accountability

- transparency
- accessibility
- (e) Co-operation & Co-ordination
  - with municipal departments
  - inter-governmental
  - extra-governmental
- (f) Redress
  - leveling the playing field
- (g) Equity
  - fairness
  - justice
  - equality
- (h) Flexible and dynamic
  - less rigidity
  - adapting and changing with times
- (i) Developmental
  - internal
  - external
- (j) Informed
  - Identification of environmental impacts.
  - Identification of cumulative effects.
  - Provision of site specific data.

- 4.2. Subject to the provisions of section 14 of the MFMA , the Municipality reserves the right to decide in its sole discretion to dispose or let Council owned property and its decision in this regard is final.
- 4.3. The Municipality has a core responsibility to acquire and avail land and buildings, in the first instance, for use by its Business Units for purposes of developing and maintaining Municipal infrastructure, promoting service delivery and for facilitating social and economic development, spatial integration and environmental sustainability. Immovable assets not required for these purposes are by implication surplus to Municipal needs although future requirements of the Municipality must be acknowledged and hence the need to hold property in reserve.
- 4.4. The Municipality has a responsibility to acquire, manage, develop and release its real estate holdings and rights on behalf of its residents and ratepayers. The key consideration is that the best interests of the Municipality (and thus their residents) should be paramount in all real estate transactions that the Municipality enters into. This demands that in all transactions the Municipality enters into, there should be maximum benefit to it, its operational requirements and the broader community.
- 4.5. Certain interventions are regularly necessary in land transactions pursued by the Municipality as compared to those of the private property market. As the private market is solely concerned with maximising capital gain, as against the collective role of the Municipality in acting in the best interest of its citizens, it follows that the Municipality will not singularly follow the processes and values of that market.

- 4.6. Land and buildings affect the Municipality's entire organisation and straddles all Units and Committees of the Municipality. Therefore, the Land Disposal Framework must act in support of principles and values such as economic development, social, economic and environmental sustainability, land use, housing, social and community infrastructure, physical infrastructure, biodiversity protection, culture and recreation.
- 4.7. Market forces will always be the point of departure in any land or property transaction and this must therefore be recognised and acknowledged although the Municipality in subscribing to affirmative action principles, must further incorporate these principles in its' Land Disposal decisions, to redress practices in the past.
- 4.8. A policy in respect of immovable property includes any right, interest or servitude therein or there over and must also take account of other legislation, policies and practices relating to land use, health, environment (both natural and built), safety, etc.

#### **PART 5: SCOPE OF APPLICATION**

- 5.1. This Policy is applicable to all Municipal owned properties and must be complied with in every case where the disposal and letting of immovable assets are dealt with.
- 5.2. All applications must be referred in the first instance, to the Disposal Committee established in terms of paragraph ... of this Disposal Policy.

#### **PART 6: RESTRICTIONS & SERVITUDES**

- 6.1. Political Office bearers and officials in the employ of the Municipality shall **NOT** have the right to make an offer for acquisition of immovable assets being disposed of by the Municipality.
- 6.2. A political office-bearer or an official in the employ of the Municipality who, in his / her personal capacity, has a direct or indirect interest in an immovable asset proposed for disposal, shall declare such interest. Failure to disclose such interest will result in such sale or lease being cancelled forthwith and the employee / office bearer held responsible for wasted costs.
- 6.3. An official in the employ of the Municipality shall **NOT** act as a member of a panel responsible for assessing and adjudicating proposed disposals if his / her presence in such panel may potentially be deemed to be unfairly influential, discriminatory or in any manner contrary to the principles of this policy.

#### **SERVITUDES**

- 6.4. A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable

asset. Servitudes result in a burden on the immovable asset for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset.

- 6.5. If the proposed servitude will result in the immovable asset being negatively affected, including the impairment of the ability to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude must not be granted.
- 6.6. Servitudes may be granted to any person (private or state organ) upon payment of appropriate market related compensation by such person provided that where another organ of state requires a servitude for the benefit of the general public and subject to the necessary authority having been obtained, the payment to the granting of the servitude, may be waived. The party requiring the servitude, is responsible for all costs relating to the granting and registration of the servitude.

## **PART 7: MAINTENANCE**

- 7.1. Given the changing nature of the regulatory, control and operational environment of the Municipality, this Policy will be regularly reviewed and updated on an ongoing basis.
- 7.2. For clarification of any matter contained in this Policy, please address queries to the [redacted] in the Office of the Chief Financial Officer [CFO].

## **PART 8: IMPLEMENTATION**

- 8.1. This Policy is effective from [redacted]
- 8.2. It is the responsibility of the Office of the CFO and various Line Department Managers to bring the content of this Policy to the attention of all parties concerned.
- 8.3. Enquiries on this Policy can be solicited from the Office of the CFO.

## **PART 9: GOVERNANCE AND REGULATORY FRAMEWORK**

- 9.1. All disposals or letting of assets in terms of this Policy shall comply with the:
  - 9.1.1. Constitution of the Republic of South Africa, 1996 as amended;
  - 9.1.2. Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) – section 118 – [MSA];
  - 9.1.3. Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) – sections 14 and 33 – [MFMA];
  - 9.1.4. Municipal Asset Transfer Regulations, 2008 – [MATR]; and
  - 9.1.5. Any other applicable legislation, regulations and policies that may govern the disposal, letting or transfer of ownership of municipal land and that are not in contradiction with the primary legislation referred to above.
- 9.2. A transaction made or payment received that does not conform to the legislation referred to above as well as the provisions of this Policy is deemed to be irregular expenditure and will be treated as such in terms of the provisions of the MFMA.



- 9.3. All particulars of asset disposal or transfer must be reflected in the budget and any adjustment budgets, in accordance with section 17 of the MFMA and MATR 47.
- 9.4. Before transfers are made the provisions of sections 14 and 33 of the MFMA must be complied with.

**9.4.1. Section 14**

- “(1) A Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.*
- (2) A Municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in sub-section (1), but only after the Municipal Council, in a meeting open to the public –*
- (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and*
- (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.*
- (3) A decision by a Municipal Council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that asset has been sold, transferred or otherwise disposed of.*
- (4) Municipal Council may delegate to the Accounting Officer of the Municipality, its powers to make the determinations referred to in sub-sections 2(a) and (b) in respect of movable capital assets below a value determined by the Council.*
- (5) Any transfer of ownership of a capital asset in terms of sub-section (2) or (4) must be fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy which the Municipality must have and maintain in terms of Section 111.*
- (6) This section does not apply to the transfer of a capital asset to another Municipality or to a Municipal entity or to a National or Provincial organ of State in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with a prescribed framework.”*

**9.4.2. In terms of section 33 of the Municipal Finance Management Act, 2003 it is provided that:**

***“Contracts having future budgetary implications***

- 33. (1)** *A municipality may 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 do so only if—*
- (a) the municipal manager, at least 60 days before the meeting of the municipal council at which the contract is to be approved—*
- (i) has, in accordance with section 21A of the Municipal Systems Act—*
- (aa) made public the draft contract and an information statement summarising the municipality’s obligations in terms of the proposed contract; and*
- (bb) invited the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed contract; and*
- (ii) has solicited the views and recommendations of—*

- (aa) *the National Treasury and the relevant provincial treasury;*
  - (bb) *the national department responsible for local government; and*
  - (cc) *if the contract involves the provision of water, sanitation, electricity, or any other service as may be prescribed, the responsible national department;*
- (b) *the municipal council has taken into account—*
- (i) *the municipality's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;*
  - (ii) *the impact of those financial obligations on the municipality's future municipal tariffs and revenue;*
  - (iii) *any comments or representations on the proposed contract received from the local community and other interested persons; and*
  - (iv) *any written views and recommendations on the proposed contract by the National Treasury, the relevant provincial treasury, the national department responsible for local government and any national department referred to in paragraph (a)(ii)(cc); and*
- (c) *the municipal council has adopted a resolution in which—*
- (i) *it determines that the municipality will secure a significant capital investment or will derive a significant financial economic or financial benefit from the contract;*
  - (ii) *it approves the entire contract exactly as it is to be executed; and*
  - (iv) *it authorises the municipal manager to sign the contract on behalf of the municipality.*
- (2) *The process set out in subsection (1) does not apply to—*
- (a) ....
  - (b) ...
  - (c) *contracts—*
    - (i) *for categories of goods as may be prescribed; or*
    - (ii) *in terms of which the financial obligation on the municipality is below—*
      - (aa) *a prescribed value; or*
      - (bb) *a prescribed percentage of the municipality's approved budget for the year in which the contract is concluded.*
- (3) (a) *All contracts referred to in subsection (1) and all other contracts that impose a financial obligation on a municipality—*
- (i) *must be made available in their entirety to the municipal council; and*
  - (ii) *may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).*
- (b) *Paragraph (a)(i) does not apply to contracts in respect of which the financial obligation on the municipality is below a prescribed value.*
- (4) *This section may not be read as exempting the municipality from the provisions of Chapter 11 to the extent that those provisions are applicable in a particular case."*

**9.4.3. The Municipal Asset Transfer Regulations [MATR], R 878, No. 31346, 1 September 2008, provide as follows:**

- 9.4.3.1. MATR applies to municipalities which transfer and dispose capital assets as well as the granting of rights to use, control and manage capital assets (the latter being inclusive of the leasing of capital assets owned by the municipality).

9.4.3.2. The MATR is in totality applicable to this Policy and is incorporated into the Policy as Annexure A. In the event of any inconsistencies between the Policy and the MATR, the provisions of the MATR will prevail unless the context clearly dictates otherwise.

**9.4.4. Municipal Supply Chain Management [SCM] Policy and System, 2010, provides at PARTS 22 & 25 as follows:**

**9.4.4.1. PART 22: Sale of assets and goods and letting of assets**

**POLICY**

- The municipality shall apply the **same** policies to the sale of assets and goods as for the procurement thereof.
- Any sale of immovable municipal property must be at market related value unless National Treasury approved otherwise or as provided for in section 14 of the MFMA and SCM Treasury Regulation 40.

*22.1.1. The determination to sell assets and goods must first be made in terms of the Municipality's disposal policy.*

*22.1.2. Once the decision has been made to sell such assets and goods as a disposal strategy, the same procurement processes must be utilised as for purchases with the SCM Unit playing an active role in the process.*

*22.1.3. Since revenue is applicable, the objective is to receive the highest bidding price. However, preferential procurement objectives still apply in these instances.*

*22.1.4. The municipality must endeavour to obtain market related prices when dealing with disposal of movable assets.*

*22.1.5. It is the Disposal Committee's responsibility to ensure that every disposal action has been investigated to achieve the best advantage for the municipality.*

**POLICY**

- The letting of immovable municipal property (excluding municipal housing for officials and political office bearers) must be at market related tariffs, unless the National Treasury approves otherwise.
- No municipal property may be let free of charge without the prior approval of National Treasury.
- The Accounting Officer shall review, at least annually when finalising the budget, all fees, charges, rates, tariffs or scales of fees or other charges relating to the letting of municipal property to ensure sound financial planning and management.

**9.4.4.2. PART 25 - Disposal Management**

**POLICY**

- For immovable asset disposals and management refer to Part 22.

**9.4.4.3. Adjudication of Disposals and Letting**

- Adjudication of all disposals and letting through an open bid process will be conducted in terms of the Preferential Procurement Policy Framework Act [PPPFA] and the Broad Based Black Economic Empowerment Act [BBBEE]. The following formula will be applied until amended by subsequent legislation :-

*The 80/20 or 90/10 preference point system for the sale and letting of assets. The 80/20 formula applies to a value below R500 000,00 and the 90/10 formula to values above R500 000.00.*

$P_s = 80/90$

$$1 + \frac{P_t - P_h}{P_h}$$

*Where :-*

*P<sub>s</sub> = Points scored from price of bid under consideration.*

*P<sub>t</sub> = Rand value of bid under consideration.*

*P<sub>h</sub> = Rand value of highest acceptable bidder. Bid documents must contain a detailed breakdown of the points that will be awarded for various criteria.*

## **PART10. METHODS OF DISPOSAL AND LETTING**

**10.1.** The disposal and letting of immovable property owned by the Cape Agulhas Municipality depends on the category allocated to the relevant property as per Part 11 and once categorised may be disposed or let in accordance with one of the following described methods:

### **10.1.1. Sale or Letting through a Public Bid Process**

- All sales and letting of immovable assets should be at current market value except when the public interest or the plight of the poor demands otherwise as per Part 11.1. All transactions are subject to the provisions of the Municipal SCM Policy and System and those contained in this policy.
- Section 14 (2)(b) requires the Municipal Council to have regard to a fair market value of assets which includes rentals.
- An Agreement of Lease, should be concluded, clearly describing all salient details i.e. the parties, immovable asset(s), rental payable, conditions, duration and breach of the Lease Agreement. A cession of a Lease does not fall within the requirements of Section 14 of the MFMA

### **10.1.2. Donation “Gratis” Transfer**

- The donation (“gratis” transfer) of an immovable asset to other organs of State or to CBO’s, NGO’s, NPO’s, and Civil Society Organisations, in furtherance of Socio-Economic and Environmental Objectives may be considered by the Council.

### **10.1.3. Exchange**

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

### **10.1.4. Public Private Partnership**

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

- A PPP agreement may only be entered into following the provisions of Section 120 of the MFMA.

#### **10.1.5. Sale by pre-qualification**

- Alienation is specifically designed for the sale of vacant residential building sites to persons on a waiting list who comply with preset 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 bid for vacant buildings sites when made available by the Council.
- Transfer of immovable assets contemplated above shall be subject to a clearly defined reversionary clause, providing for a reversion of ownership to the Cape Agulhas Municipality, free of charge, in the event that the immovable asset is no longer to be used.

#### **10.1.6. Transfer between spheres of government**

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

#### **10.1.7. Unsolicited bids**

- The Municipal Supply Chain Management Policy provides that the Municipality is in terms of Section 113 of the MFMA not obliged to consider unsolicited bids received outside a normal bidding process.
- If the Municipality decides in terms of Section 113(2) of the MFMA to consider an unsolicited bid, it may do so only if:-
  - (a) *The product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;*
  - (b) *The product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the Municipality or Municipal entity.*
  - (c) *The reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.*
- If the Municipality decides to consider an unsolicited bid that complies with sub-regulation (2), the Municipality must make its decision public in accordance with Section 21A of the Municipal Systems Act, together with :-
  - (a) *Its reasons as to why the bid should not be open to other competitors.*
  - (b) *An explanation of the potential benefits for the Municipality or entity were it to accept the unsolicited bid; and*
  - (c) *An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice. Once the Municipality or Municipal entity has received written comments pursuant to sub-regulation (3), it must submit such comments, including any responses from the unsolicited bidder, to the National Treasury and the relevant Provincial Treasury for comments.*
  - (d) *The Adjudication Committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.*
  - (e) *A meeting of the Adjudication Committee to consider an unsolicited bid must be open to the public.*
- When considering the matter, the Disposal Committee must take into account :-
  - (a) *Any comments submitted by the Public; and*

- (b) *Any written comments and recommendations of the National Treasury or the relevant Provincial Treasury. If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations.*
- Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the Municipality to the bid may be entered or signed within 30 days of the submission. The requirements of the contents above, does not apply to unsolicited bids which are submitted in terms of Part 10.1.8.1 below.

#### **10.1.8. Special Circumstances**

- The Municipality acknowledges that in certain special circumstances property can be sold or let by Private Treaty. These special circumstances apply to the following categories of properties :-
- Part 11.1 category land.
  - Non-viable parcels of land may be let or sold to adjoining owners. The determination of non viability rests with the Council and its decision will be final.
  - Viable properties in the case of business and industrial expansion and retention, may be let or sold to the adjoining owners at market related prices.
  - Vacant industrial land.
  - Vacant land for the development of lower income housing in the categories of low cost, social and bank charter housing.
  - The sale of Municipal land, involving Black Economic Empowerment in partnership with foreign investors.
  - Municipal land for community projects.
  - Municipal property for educational purposes other than private schools.
  - Municipal property for disposal or letting to registered business cooperatives.
  - The sale of Municipal owned property, subject to a long term registered lease, of ten years and longer, where the sale of the freehold rights is of greater benefit to Council than the present value of the income flow from rental. This provision does not apply to Council owned property that is multi-tenanted. Such a sale must only take place after a proper cost benefit analysis has been undertaken. The analysis must include the following:-
    - (i) Current market value, mindful of the provisions of MATR 29.
    - (ii) Replacement cost.
    - (iii) Income streams / cash flow analysis.
    - (iv) Economic life expectancy.
    - (v) BBBEE considerations.
    - (vi) Strategic importance.
    - (vii) Possible future use.
    - (viii) Current lease clauses.
  - Airport land for aviation purposes.
  - Previously disadvantaged areas identified by the Municipality, where the local economy is stagnant and remedial steps will require special treatment.

## **PART 11. MANNER OF DISPOSAL/LETTING OF CATEGORIES OF MUNICIPAL LAND**

### **11.1. Social care users**

11.1.1. Social care is defined as services provided by registered welfare, charitable, non-profit cultural and religious organisations and includes, but is not limited to, the following types of uses :-

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

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

11.1.3. Council reserves the right to entertain unsolicited bids for the purchase or lease of viable immovable property for social care uses with the proviso that it abides by Council's IDP objectives.

11.1.4. The following factors shall be considered relevant in the selection and allocation of immovable property to places of worship:-

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

### **11.2. Sport facilities and other public amenities**

11.2.1. Sport facilities and other public amenities may be let by Private Treaty to Sports Boards, Sports Federations and other similar bodies in accordance with Council's Policies on sports facilities and public amenities.

11.2.2. Community based bodies and non-professional sporting bodies shall be charged the tariff rentals as approved by Council from time to time.

11.2.3. Professional sports bodies and bodies operating for profit shall be charged a fair market related rental based on the market value of the property to be leased.

### **11.3. Outdoor seating and adjoining restaurants**

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

### **11.4. Existing tenants**

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

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

### **11.5. Residential land incapable of development on its own**

11.5.1. Ownership or letting will be offered to the respective adjoining owner.

11.5.2. The property will be priced at market related value.

11.5.3. The purchaser will be responsible for any and all costs associated with the possible relocation of services, re-zoning, survey, registration and transfer.

### **11.6. Residential land capable of development on its own**

11.6.1. Ownership or letting will be offered by means of an open competitive bidding process as provided for in Parts 9.4 and 10.1.1.

11.6.2. The property will be priced at market related value, within the prescripts of sections 14 and 33 of the MFMA.

11.6.3. Bulk land parcels will only be released if it is identified as available for disposal or letting in the Municipality IDP.

### **11.7. Residential land not immediately required for municipal needs**

11.7.1. These are typically land or parcels of land acquired for capital projects, which has yet to commence.

11.7.2. In such instances:

- The property will be offered on a short- to medium- term lease basis;



- The rental will be market related, unless determined otherwise by the Council; and
- The property could be offered by private treaty or open bid.

#### **11.8. Commercial or industrial land incapable of development on its own**

- 11.8.1. Ownership or letting will be offered to the respective adjoining owner.
- 11.8.2. The property will be priced at market related value.
- 11.8.3. The purchaser will be responsible for any and all costs associated with the possible relocation of services, re-zoning, survey, registration and transfer.

#### **11.9. Commercial or industrial land capable of development on its own**

- 11.9.1. Ownership or letting will be offered by means of an open competitive bidding process as provided for in Parts 9.4 and 10.1.1.
- 11.9.2. The property will be priced at market related value, within the prescripts of sections 14 and 33 of the MFMA.
- 11.9.3. Bulk land parcels will only be released if it is identified as available for disposal or letting in the Municipality IDP.

#### **11.10. Commercial or industrial land not immediately required for municipal services**

- 11.10.1. These are typically land or parcels of land acquired for capital projects, which has yet to commence.
- 11.10.2. In such instances:
  - The property will be offered on a short- to medium- term lease basis;
  - The rental will be market related, unless determined otherwise by the Council; and
  - The property could be offered by private treaty or open bid.
- 11.10.3. In the event of multi-tenanted premises, a fixed 3 to 5 year lease period will be offered in keeping with normal business practices.

### **PART 12. DISPOSAL PROCESS**

#### **12.1. GENERAL REMARKS**

- 12.1.1. Council is permitted to dispose or let immovable property in its ownership, on a long term or short term basis, by way of Private Treaty or Open Bid for development purposes aligned with its strategic objectives.
- 12.1.2. Where possible, Council's immovable property should be managed as a sustainable resource by leveraging environmental, social and economic returns on such immovable property while Council retains ownership thereof.
- 12.1.3. Unless otherwise provided for in this Policy, vacant or improved immovable property shall be disposed of or let at a fair market related rental.

- 12.1.4. All applications to dispose of or lease immovable property must be considered in accordance with this Policy Framework and other applicable legislation.
- 12.1.5. Unless otherwise provided herein, the disposal of or letting of viable immovable property by Council, shall be affected by means of a process of public competition/open bid.
- 12.1.6. Previously Disadvantaged Individuals, who are South African citizens, will be afforded preference in terms of the Municipality's Supply Chain Management Policy in respect of the disposal of or letting of viable immovable properties as embodied in Section 9 (2) of the Constitution.
- 12.1.7. In order to achieve the objective of broad based black economic empowerment, Council reserves the right to limit the number of leases per bidder in the course of a bid process.
- 12.1.8. No application shall be processed unless the prescribed application fee or tariff has been paid nor shall any proposed lease be advertised unless the applicant has confirmed, in writing, that it will bear all costs involved in such transaction including, but not limited to, Legal, Survey, Re-zoning, Sub-division, Consolidations, Advertisement, Relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs.

## **12.2. DECISION TO DISPOSE OR LET MUNICIPAL LAND**

- 12.2.1. The following procedure will guide the decision making to dispose or let municipal land:
- (i) The Manager: Housing will complete the application form marked CA/LDP 01 and confirm that the request is consistent with the Municipality's asset management plan and IDP.
  - (ii) The Manager: Housing will submit a substantiating report confirming the suitability, condition and whole-life-costing of retaining, disposal or letting of the relevant property.
  - (iii) The Land Disposal Committee will review:
    - The application form and supporting documentation,
    - The views of the local planning and community planning Departments,
    - The comments from a legal perspective regarding title deeds and servitudes to ascertain any restrictive covenants or obligations on the Council which may affect the value or disposal or letting of the land,
    - The property is not required for minimum level of basic municipal services,
    - The valuation of the land,
    - The economic and community value of the asset if disposed or let,
    - The financial appraisal from the CFO as to whether or not the disposal or letting of the property would be financially viable to the Council, which appraisal would be regarded as confidential as per the provisions of the Promotion of Access to Information Act, 2000 – [PAIA],
    - The category of the property as per Part 11,
    - The method of disposal or letting as per Part 10,
    - Ongoing resource implications for the Municipality as a result of the disposal or letting including life-cycle costs,
    - Potential risks and mitigating factors,

- Effect of disposal on the credit rating of the Municipality, if applicable,
  - Transfer of liabilities, if applicable,
  - Public participation process required, and
  - Whether the property is exempted as per section 14(6) of the MFMA, i.e value of property less than R 10m – no public participation process is required.
- (iv) The minutes of the Land Disposal Committee will be submitted to Council for endorsement.
- (v) Once endorsed by Council and if the value exceeds R 10 m, comments will be solicited from:
- The community,
  - Other interested persons,
  - National Treasury and relevant provincial treasury,
  - National department responsible for local government, and
  - Relevant national or provincial department, if the property involves the provision of water, sanitation or electricity.
- (vi) The Land Disposal Committee must consider the comments and views referred to above.
- (vii) The Minutes of the Land Disposal Committee together with a final recommendation will be submitted to Council for approval.

## **12.2. ADVERTISEMENT PROCESS**

12.2.1. The Municipal Manager must, within 60 days after the approval of Council in Part 12.1 place a public advert in the main local newspapers distributed in the municipal area:

- Calling for bids if the method of disposal or letting is as per Part 10.1.1.
- Describing the method as approved by the Council if the method of disposal or letting is as per Part 10.1.2 – 10.1.8.
- Requesting public comment or input, subject to MATR exemptions.

## **12.3. APPLICATION PROCESS**

12.3.1. Applications must:

- (i) Be made on the prescribed forms (if applicable).
- (ii) All applications must be accompanied by a covering letter on the letterhead of the organisation or body, signed by the Head of the Organisation or body and must include the following information:
  - (a) Date of application;
  - (b) Contact details of the organisation or body;
  - (c) Date established;
  - (d) Type of organisation;
  - (e) Registration number;
  - (f) Banking details;
  - (g) References;

- (h) Confirmation of adherence to all conditions;
- (i) Checklist of supporting documentation; and
- (j) Prescribed declarations.

#### **12.4. SCREENING AND EVALUATION PROCESS**

12.4.1. Applications will be received and registered by the ...

12.4.2. A first screening will be conducted by the ... confirming:

- (i) Compliance with the criteria contained in this policy;
- (ii) Viability of project;
- (iii) Sustainability of project;
- (iv) That applications have demonstrated that it meets the goals of the IDP;
- (v) That applicants have demonstrated cost-effectiveness measures and ability to execute project successfully, achieve clearly defined outputs or outcomes and ability to manage funds effectively; and
- (vii) Other conditions that the applicants have agreed to.

#### **12.5. APPROVAL PROCESS**

12.5.1. The Land Disposal Committee will make the final recommendation ensuring that it:

- (i) Considered all relevant public comments;
- (ii) Complies with the Municipality's criteria;
- (iii) Complies with the budgeted funds;
- (iv) Complies with the provisions of section 14 and 33 of the MFMA; and
- (v) The successful applicants' municipal accounts are up to date.

12.5.2. Council will be informed of the outcome of the process and a copy of the final agreement concluded.

#### **12.6. AWARD AND NEGOTIATION PROCESS**

12.6.1. All applicants will be informed in writing of the outcome of their applications by the Office of the CFO or his nominee.

12.6.2. Where applicants were turned down, they must be provided with reasons.

12.6.3. Successful applicants must negotiate and sign the relevant Land Availability/Sale of Land/Lease of Land Agreement.

12.6.4. Where municipal land is disposed of or let as per the provisions of Part 10.8 or Part 11.1, the following procedure is required:

- The benefitting organisation must prepare a Business Plan setting out the benefits to the Community and evidence how it intends to manage and operate the land for the benefit of the Community should the Council dispose or let the municipal land to such Organisation,

- The Land Disposal Committee will:
  - Confirm Part 12.4.2 information,
  - Confirm Part 12.5.1 information,
  - Identify any risks involved in the disposal or letting of the property to the relevant Organisation as deduced from the Business Plan and advice how these risks could be mitigated,
  - Identify and confirm the benefits to the community and whether the community benefits outweigh the risks identified, and
  - Confirm the ongoing future partnership arrangements between the municipality and the relevant Organisation and monitoring of the benefits to the community as a result of the disposal or letting.

## 12.7. MONITORING AND EVALUATION

- 12.7.1. The Accounting Officer is responsible for the monitoring and evaluation of the functions and outcomes of the Land Disposal Committee.
- 12.7.2. The Office of the CFO must maintain a register of all land disposed or let per financial year.

## 12.8. ACCOUNTING PROCESS

- 12.8.1. Payments will be effected through the ....
- 12.8.2. For accounting purposes, it is required that:
- (i) All property disposal/letting revenue be accounted for in .....
  - (ii) All property disposal/letting expenses be accounted for in ....

## PART 13. INSTITUTIONALISATION

- 12.1. In accordance with Part 22 of the SCM Policy and System and the provisions of the MATR, a Municipal Land Disposal Committee is hereby established.

### *Land Disposal Committee*

- 12.2. This Committee plays a significant role in the management of the municipality's immovable properties and provides direction regarding the disposal or letting thereof.
- 12.3. The Land Disposal Committee Charter, provides as follows:

#### **(i) Introduction**

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

#### **(ii) Background**

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

MATR and to clarify the roles and responsibilities of the Committee and the management of the Municipality.

***(iii) Authority***

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

***(iv) Purpose***

- (a) The Committee will:
  - Review and advise on the Municipal Asset Management Plan.
  - Consider and recommend the categorisation and method of disposal or letting of municipal properties.
  - Consider applications for the disposal or letting of municipal properties.
  - Consider comments received regarding the disposal or letting of municipal properties.
  - Manage the disposal or letting method of municipal properties as endorsed by Council.
  - Negotiate relevant disposal or letting agreements.

***(vi) Objectives***

- (a) The primary objectives of the Committee are to assist the Council and the Accounting Officer with the effective discharge of their responsibilities, in particular, with regard to the following:
  - Maintaining and sustaining the Municipality's Immovable Asset Management Plan and Strategy.
  - Provide leadership in the disposal and letting of municipal properties.
  - Continuous evaluation of the immovable asset management performance of the Municipality.
  - Review and ensure the continuous development and maintenance of the Land Disposal Policy.
  - Ensuring that adequate land disposal and letting advice is provided to the municipality.
  - Satisfy the MFMA prescribed reporting requirements.
  - Review the Committee Charter.

***(vii) Duties of the Committee***

- (a) The duties of the Committee are to:
  - Consider and recommend the Municipality's Immovable Asset Management Plan and Strategy.
  - Consider and recommend the disposal or letting of municipal properties.

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

***(viii) Composition of the Land Disposal Committee***

- (a) The Members of the Committee will be appointed in writing by the AO.
- (b) The Chairperson of the Committee is the ....
- (c) The AO may instruct another senior manager at a level not lower than .... to fulfil the role of Chairperson. Such instruction must be in writing.
- (d) In the absence of the designated Chairperson the Chief Financial Officer will perform that role.
- (e) Each member of the Committee must be issued with a copy of the approved Committee Charter.
- (f) The Committee comprises of the following members:

- Accounting Officer
- ....
- ....
- ...
- ...

***(ix) Committee secretariat***

- (a) The Secretariat of the Land Disposal Committee is the ... in the office of the ....

***(x) Committee planning***

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

***(xi) Committee meetings***

- (a) The number of meetings is determined by the Chairperson so as to allow the Committee to fulfill its obligations.
- (b) The number of meetings shall not be less than four meetings per annum (the Committee should attempt to meet quarterly).
- (c) The Chairperson is required to call a meeting of the Committee if requested to do so by any member.
- (d) All meetings shall be conducted subject to an agenda to which members have been given the opportunity to contribute.

- (e) The quorum for a meeting shall be a minimum of **five (5)** Committee members.
- (f) Minutes of the meeting will be maintained and kept for record purposes in accordance with the official file plan.
- (g) Minutes shall be ratified by the Committee and signed by the Chairperson.
- (h) Submissions in preparation for a Committee meeting shall be distributed to the members at least **five (5)** working days before the meeting.

#### **PART 14. DEFINITIONS**

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

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

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

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

**Black people:** - Means Africans, Coloureds and Indians, as referred to in the B-BBEE Act No. 53 of 2003, and the DTI definition contained in the DTI Codes of good practice.

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

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

**Council:** - Means the full council.

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



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

**Local Area:-** Means the area under the jurisdiction of the Cape Agulhas Municipality.

**Public Private Partnerships:-** Means a Public Private Agreement between the Municipality and a Private Partner as prescribed in Section 120 of the Municipal Finance Management Act, No. 56 of 2003 – [PPP].

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

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

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

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