



KAAP AGULHAS MUNISIPALITEIT
CAPE AGULHAS MUNICIPALITY
U MASIPALA WASECAPE AGULHAS

PROPERTY MANAGEMENT POLICY

Approve by council on 31 May 2023

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CHAPTER 1: INTERPRETATION, SCOPE, PURPOSE AND OBJECTIVE OF THE POLICY

1. DEFINITIONS

1.1 In this policy, unless inconsistent with the context, the following expressions bear the meanings assigned to them below:

“acquisition” means to acquire by way of purchase or lease.

“adequate notice” means a notice period of not less than 30 days within which representations, comments or objections may be made.

“advertise” means the giving of adequate notice of the nature and purpose including the material substance of the proposed administrative actions, by publishing a notice in the press, and where deemed necessary by the Municipal Manager, any additional form of notice, which may include-

- (a) displaying on a notice board; or
- (b) holding a public meeting.

“alienate” means to dispose of immovable property in favour of another person with the intention of transferring the ownership of the immovable property to the acquirer thereof.

“basic municipal service” means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment;

“bid” means a written offer submitted in a prescribed or stipulated form, in response to an invitation by the Municipality for a procurement or disposal, as part of the competitive bidding process of the Municipality SCM policy;

“church” means a place of worship to the extent and for that portion of facility being used for spiritual gathering and/ or social/pastoral/welfare caring.

“chief financial officer” means a person designated in terms of Section 80(2)(a) of the MFMA.

“close” in relation to a public street or public place, means to close for all purposes.

“commercial service” means a commercial service as defined in section 1 of the MATR;

“Community value” is the extent of benefit or gain generated when resources, input, processes or policies are combined to improve the lives of individuals or society as a whole.

“competitive bidding process” means a process whereby prospective bidders are invited through public media to submit bids and such bids are administered in a fair, transparent, competitive and cost effective manner;

“constitution” means the Constitution of the Republic of South Africa, 1996

“council” means the Council of the Municipality of Cape Agulhas and includes any Political Structure, Political Office Bearer, Councillor or Official, acting under delegated authority. COUNCIL is the custodian of all immovable property of the municipality and is responsible for the administration thereof.

“disposal”, means the sale, exchange, donation, or letting of Municipal land, 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.

“disposal management system”, means the system contemplated in regulation 40 of the Municipal Supply Chain Management Regulations.

"emergency" means an emergency dispensation in which one or more of the following conditions are present –

- a) the possibility of human injury or death;
- b) the prevalence of human suffering or deprivation of rights;
- c) the possibility of damage to property, or suffering and death of livestock and animals;
- d) the interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the Municipality as a whole;
- e) the possibility of serious damage occurring to the natural environment;
- f) the possibility that failure to take the necessary action may result in the municipality not being able to render an essential service; and
- g) the possibility that the security of the state could be compromised.

"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.

"exempted capital asset" means a Municipal capital asset which is exempted in terms of section 14(6) or 90(6) of the Act from other provisions of that section.

"fair market value" means the estimated amount for which an capital asset should be exchanged on the date of valuation between a willing buyer and a willing seller after proper marketing wherein the parties have each acted knowledgeable, prudently, and without compulsion.

"fraudulent practice" means a misrepresentation of fact in order to influence a selection process and includes: collusive practices among bidders (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the municipality of the benefits of free and open competition.

"high value" means that the fair market value of the Property exceeds R50 million or 1% of the total value of the capital assets of the Municipality as determined from the latest available audited financial statements of the Municipality, or such lower amount as may from time to time be determined by a resolution of the Council of the Municipality;

"housing stock" means housing units that are leased to members of the public as well as housing subsidised units that are earmarked for disposal to qualifying beneficiaries.

"IDP" means the approved Integrated Development Plan of Cape Agulhas Municipality, as provided for in Chapter 5 of the Systems Act.

"Immovable property" means vacant land and includes any structural improvements thereon.

"Independent property valuer" means a person registered as a professional associated valuer in terms of property valuers Professional Act, 2000(Act 472/2000)

"lease agreement" means a written agreement specifying rights and duties pertaining to the exclusive use of property for a continuous period of time, thirty (30) calendar days or longer, and which sets forth the terms and conditions of the use of the real property.

"Long term Lease" means a signed lease agreement longer than three years.

"MATR" means the Municipal Asset Transfer Regulations promulgated in terms of the MFMA and published in *Government Gazette* No. 31346 of 22 August 2008;

"MFMA" means the Local Government: Municipal Finance Management Act, 56 of 2003, including any Regulations promulgated in terms thereof from time to time;

"municipality" means Cape Agulhas Municipality established in terms of Section 4 of the Establishment Notice;

"municipal area" means the area under the jurisdiction and control of the Council.

"municipal land audit (MLA)" means the audit of municipal owned properties which was conducted during the latest audit as per municipal operations.

“municipal manager” means a person appointed in terms of Section 82 of the Municipal Structures Act, No 117 of 1998 as the head of the Municipality’s administration.

“municipality’s property” or **“property”** means all the Immovable Property owned and managed by the Municipality in terms of this Policy;

“Municipal systems act” means the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000).

“non exempted capital asset” means a Municipal capital asset that is not exempted in terms of section 14(6) or 90(6) of the Act.

“non-Significant Property Right” means a Property Right in respect of the following categories of Property –

- a) Property right with a Value less than R10 million, Property Right longer than 3 years;
- b) Property right with a Value more than R10 million, Property Right less than 3 years;
- c) Property right with a Value less than R10 million, Property Right less than 3 years.

“non-viable property” means Property that, owing to urban planning, physical constraints or extent cannot be developed on its own or function as a separate entity and that can therefore become functional only if used by an adjoining owner in conjunction with such owner’s property;

“official” means an official as defined in section 1 of the MFMA;

“organ of state” means an organ of state as defined in the MATR;

“owner” in relation to land, means the person in whose name that land is registered in a deeds registry, which may include the holder of a registered servitude right or lease and any successor in title of such a person, and includes any person authorized to act as such by the registered owner, any person who in law has been entrusted with the control of such assets or a person to whom land has been made available in terms of a land availability agreement.

“plight of the poor” means the needs of the people that are vulnerable and unable to meet their socio-economic needs independently or to support themselves and their dependants and are in need of social assistance.

“property laws” means the relevant provisions of the MFMA and the MATR collectively;

“property right” means a right to use, control or manage a property for a period exceeding a calendar month, as granted by the Municipality without ceding legal ownership in the Property. For the avoidance of any doubt, a servitude or encroachment in, on, over or under Property granted by the Municipality, or a lease agreement entered into by the Municipality as lessor, constitutes a Property Right;

“private treaty” means where the proposed disposal involves a disposal without public competition as defined in the MFMA to a non-government entity.

“property transaction” means either a Disposal of Property or the granting of a Property Right;

“public place” means any land indicated on an approved plan, diagram or map as an open space of which ownership as such vests in the Municipality.

“SCM policy” means the Supply Chain Management Policy of the Municipality, as approved and implemented in terms of section 111 of the MFMA, read with the SCM Regulations;

“SCM regulations” means the Municipal Supply Chain Management Regulations promulgated in terms of the MFMA and published under GN 868 in *Government Gazette* No. 27636 of 30 May 2005;

“significant Property Right” means a Property Right with a value in excess of R10 million which is granted for a period exceeding 3 years;

“Social Care Organisations” is defined as:

- Childcare facilities in so far as it contributes to the functioning of a multi-use child care facility and is operated on a non-profit basis
- Services provided by registered welfare, charitable, non-profit, cultural, organizations
- Centres utilized as homes for the handicapped and disabled persons
- Non-Profit rehabilitation centres
- Homes/centres for indigent, battered or destitute persons
- Organizations for the homeless and elderly
- Youth activity/culture centres and organizations.
- Facilities for accommodation, care and burial of animals
- Community development organisations operating on a non-profit basis

“spatial development framework” means the framework contemplated in Section 26(1)(e) of the Municipal Systems Act.

“Systems act” means the Local Government: Municipal Systems Act, 32 of 2000, including any Regulations promulgated in terms thereof from time to time;

“unsolicited bid” is a bid/proposal received from a developer to acquire immovable property, or rights in immovable property, that is owned by the Municipality, outside the normal bidding process, i.e. without the Municipality having asked for such proposal/bid.

“viable property” means Property that can be developed and function as a separate entity capable of registration by the Registrar of Deeds.

1.2 Words not defined in this Policy have the meaning assigned to them in the MATR.

2. SCOPE AND PURPOSE

2.1 The purpose of this Policy is to provide a framework for the management and disposal of the municipality’s land and other immovable capital assets that are not needed to provide the minimum level of basic municipal services and that are surplus to the municipality’s requirements.

2.2 The Municipality’s land and other immovable capital assets shall be disposed of in the manner as provided for in this policy as well as per the SCM policy. The Property Management Department is responsible for the administration of this Policy, and shall in this regard, in consultation with the Supply Chain Management Unit of the municipality, be responsible for the administration of the competitive bidding process relating to the disposal and leasing of the Municipality’s land.

2.3 In compliance with the provisions of section 14(1) of the MFMA, the Municipality shall not transfer ownership as a result of a sale or other transaction, or otherwise permanently dispose of a capital asset that is needed to provide the minimum level of basic municipal services. The following municipal services are classified as basic municipal services for the purposes of section 14(1) of the MFMA, and this classification must be used by the administration as criteria to compile a List of all Municipal Land and Buildings:

- a) Electricity services
- b) Water services
- c) Sanitation services
- d) Refuse removal, refuse dumps and solid waste disposal services
- e) Municipal Roads
- f) Public Places
- g) Cemeteries

3. RESPONSIBILITIES

The Municipality has a core responsibility to acquire and avail land and buildings, in the first instance, for its own use for purposes of developing and maintaining municipal infrastructure, promoting service delivery and for facilitating social and economic development and spatial integration.

Land assets unrelated to these responsibilities are, by implication, surplus to the municipality's requirements although future requirements must be acknowledged and hence the need to hold immovable property in reserve.

The municipality has a further responsibility in terms of acquiring, managing, developing and releasing its land, buildings and rights. In this regard the key consideration is that the best interests of the municipality (and thus its residents) rather than that of individuals should be paramount in all real estate transactions that the municipality enters into. This demand that, in all transactions that the municipality enters into, there should be maximum benefit to the municipality, its operational requirements and the broader community.

Land and buildings affect the municipality's entire organization. Therefore, the municipality's policy in this respect must act in support of sectoral policies such as economic development, environment management, land use, housing, social and community infrastructure, physical planning and infrastructure, and culture and recreation. Market forces will always be the point of departure in any land or property transactions, and this must therefore be recognized and acknowledged.

The Municipality should dispose of Property only in circumstances where the Municipality is satisfied that it cannot derive a reasonable economic and/or social return from continued ownership of the Property.

CHAPTER 2: DISPOSAL MANAGEMENT SYSTEM FOR PROPERTY TRANSACTIONS

4. LEGISLATIVE AND POLICY FRAMEWORK FOR THE MANAGEMENT OF THE MUNICIPALITY'S PROPERTY

- 4.1 The legislative framework for the management of the Municipality's Property is contained in a number of pieces of legislation, including but not limited to:
- 4.1.1 the MFMA, in particular section 14, which deals with disposal of capital assets;
 - 4.1.2 the MATR, which governs –
 - a) the transfer and disposal of capital assets by municipalities and municipal entities; and
 - b) the granting by municipalities and municipal entities of rights to lease, use, control or manage capital assets;

5. APPLICATION OF THE POLICY

- 5.1 Section 14 of the MFMA and the MATR apply to capital assets, which are defined in the MATR to include Immovable Property, as well as certain movable assets. This Policy only applies to Immovable Property.
- 5.2 This Policy does not apply to:
- 5.2.1 The municipality's housing stock
 - 5.2.2 Property owned by the Municipality which is subject to a Public Private Partnership
- 5.3 In terms of section 40 of the Municipal Supply Chain Management regulations, a Municipal Supply Chain policy must provide for an effective system of disposal management for the disposal and letting of assets. For that purpose of immovable assets of the municipality, this policy must be seen as the disposal management policy of the municipality.

6. GUIDING PRINCIPLES

- 6.1. The following principles and values should underpin land acquisition and disposal activities:
- 6.1.1 The use of Council's immovable property to promote social integration, to redress existing spatial inequalities, to promote economic growth, to build strong, integrated and dignified communities and to provide access to housing, services, amenities, transport and opportunities for employment.
 - 6.1.2 The management of Council's immovable property as a sustainable resource, where possible, by leveraging environmental, social and economic returns on such immovable property while Council retains ownership thereof.
 - 6.1.3. Immovable property will be sold or leased at a **market related value** except when the public interest or the plight of the poor demands otherwise. Council may likewise determent subsidized selling prices of lease rates in respect of certain classes of property in order to promote Council's functions or goals as set out in the Constitution. Should it be intended to transfer immovable property for less than its market related value, the considerations listed under regulation 13((2) of the MATR, must be taken into account.
 - 6.1.4. **Direct sale or lease of immovable property** to social care organizations is permitted 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 or the poor. Such applications will be fully motivated in the report submitted to Council. Where sales are transacted below market value the sales will be subject to suitable reversionary clause registered against the title deed of the property.
 - 6.1.5. Subsidized rates or selling prices in respect of certain classes of property to be alienated to approved categories of applicants with the view to promote Councils functions and goals as set out in the Constitution. When subsidized rates are proposed, the issues as listed in Regulation 13(2) of the MATR, must be considered. Subsidized selling prices may apply in respect of the following transactions:
 - a) The sale of land to social care organizations. The rate payable by social care organisations in respect of the sale or lease of immovable property shall be fixed by Council between 5% and 20% of the market value, subject to, in the case of sale of property, a reversionary clause being registered against the title of the property.
 - b) Redundant strips of land may be lease for garden purpose, at a nominal value as determent by Council.
 - c) The selling of land in approved industrial parks or special economic zones, at the prices as approved by Council from time to time through other policies or Council's decisions.
 - d) The rental in respect of the lease of land for commercial purposes shall be based on market value. Council may however consider a subsidized rental if in the interest of the public during the first 3 years of the lease period in the case of projects initiated by starter businesses for the purpose of Local Economic Development.

CHAPTER 3: RESERVATION AND MANAGEMENT OF IMMOVABLE PROPERTY

7. AUTHORITY TO RESERVE AND MANAGE IMMOVABLE PROPERTY

- 7.1 Council may reserve and manage immovable property in its ownership for municipal purposes aligned with its operational needs.

8. KEY PRINCIPLES PERTAINING TO THE RESERVATION AND MANAGEMENT OF IMMOVABLE PROPERTY

- 8.1 Unless it is precluded from doing so by law or by the conditions in terms of which immovable property was acquired and subject to observation of due statutory process and alignment with Council's strategic objectives, Council may:
- (a) use immovable property in its ownership to promote social integration, to redress existing spatial inequalities, to build strong, integrated and dignified communities and to provide access to housing, services, amenities, transport and opportunities for employment on a temporary or permanent basis.

- (b) enhance immovable property in its ownership by pursuing the amendment of existing rights, establishment of new rights and the provision of municipal services.
- (c) improve immovable property in its ownership by the erection of structures thereon.
- (d) permit immovable property to be managed on behalf of Council, permit it to be enclosed and permit it to be cultivated.

8.2 When immovable property under the control or management of Council is encroached upon, the Council may take such steps as may, in the opinion of the Council, be necessary to remove or regularize such encroachment. In such instances 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 Council's interest, be desirable.

9. SERVICE LEVEL AGREEMENTS

9.1 In all circumstances where a Property or Properties is/are reserved for a purpose which falls within a functional responsibility of another line department within the Municipality, the Municipality's Property Administration Department will enter into a service level agreement (SLA) with that line department.

9.2 An SLA shall regulate the respective roles and responsibilities of the Property Administration Department and the line department in respect of the following reserved Property(ies):

- a) Properties used by the line department itself, for example, where the line department uses the Property(ies) for provision of a municipal service (where the municipal service is provided through an internal mechanism as provided for in the Systems Act);
- b) Properties used by third party service providers, for example, where the line department appoints a service provider to provide a municipal service;
- c) Properties in respect of which the line department has appointed a private party to manage the Property, for example, in terms of facilities management agreements.

9.3 The SLA's shall include provisions dealing with:

- a) the purpose for which a Property is reserved;
- b) the responsibility for the safekeeping and maintenance of the building;
- c) the insurance of the building;
- d) the need for a security system in the building;

9.4 Given that the Property Administration Department is the custodian of the Municipality's Property, it is the only department within the Municipality that may conclude a contract with a third party in respect of a Disposal and the granting of a Property Right. Other line Departments may conclude agreements ancillary to immovable property assets including but not limited to Management Agreements and Facilities Management Agreements so far as such agreements to not grant the third party the right of tenure.

CHAPTER 4: ACQUISITION OF IMMOVABLE PROPERTY AND RIGHTS IN IMMOVABLE PROPERTY

10. AUTHORITY TO ACQUIRE

10.1 Council may acquire immovable property and rights in immovable property within or outside its municipal area by purchase, expropriation, exchange, donation, gift, lease or otherwise, subject to compliance with the procedures set out in this policy.;

10.2 Council may expropriate immovable property in terms of the Expropriation Act (Act 63 of 1975), or any other applicable legislation, provided that such expropriation shall only be for public purposes or in the interest of the public.

11. GENERAL PRINCIPLES

- 11.1 Council must ensure that decisions to acquire property (land, buildings and land improvements) are based on sound business and planning principles which are fully accountable and comply with:
- (a) Council priorities and initiatives;
 - (b) Corporate and service plans;
 - (c) Planning Policies; and
 - (d) Regional plans and area planning schemes.
- 11.2 The Property Administration Department undertakes the acquisition (purchase or expropriation) of Immovable Property (land) and rights in Immovable Property (servitudes) for municipal purposes on behalf of all the service departments.
- 11.3 It is the responsibility of a Service Department to timeously, by a predetermined date as specified by the Property Administration Department, advise the Property Administration Department of the land or servitudes that are required in a particular financial year. The service department is required to furnish the Property Administration Department with the full particulars of the land or servitude(s) required. The particulars required must stipulate the erf or farm number if the entire erf or farm is required, or the coordinates and extent of the land or servitude if a portion of a farm or erf or a servitude is required.
- 11.4 The Service Department is required to confirm that the acquisition is required for an approved municipal project and that funding has been approved on an approved budget for the payment of the purchase price and the costs that the Municipality will incur when transferring the land or registering the right in the name of the Municipality in the Deeds Registry.
- 11.5 The municipality will purchase the land or servitude at the market value of the land or servitude as determined by a professional valuer or at such lesser amount as may be agreed to by the seller.
- 11.6 In the case of an expropriation the compensation payable for the land or servitude shall be determined in accordance with prescripts of the legislation in terms of which the land or servitude was expropriated.
- 11.7 Once the Immovable Property has been acquired, it will be reserved for the municipal purpose for which it was acquired and dealt with in accordance with the reservation procedures outlined above.

12. ASSESSMENT

- 12.1 Prior to arriving at a decision to acquire an immovable property the Municipal Manager is required to undertake a detailed assessment to ensure that:
- (a) the service delivery needs of the Municipality are best met by the proposed acquisition;
 - (b) that broader government objectives are also considered; and
 - (c) the expenditure of public funds is justified and are approved.
 - (d) the planned acquisition is in line with the approved Spatial Development Framework(s).
- 12.2 The Municipal Manager must ensure land acquisitions associated with infrastructure projects are consistent with (where relevant) Regional Plans, State Infrastructure Plans, Municipal Infrastructure Master Plans, or other plans that cover a significant proportion of the municipal area. This is to ensure strategic landholdings contribute to a range of social, economic and environmental outcomes sought by Council, including the efficient, coordinated and timely provision of infrastructure.
- 12.3 In addition to the proposed acquisition being consistent with the objectives of planning documents, the Municipal Manager need to consider other issues when undertaking the assessment, such as:
- (a) the reason why the preferred site or area best meets the Municipality's requirements;
 - (b) the Municipality's strategic land management plan;

- (c) source of funding and value for money;
- (d) alternative service delivery options;
- (e) sharing of government resources;
- (f) method of acquisition;
- (g) valuation of property;
- (h) consultation with stakeholders;
- (i) availability of surplus government property;
- (j) risks associated with proposed transaction; and
- (k) site constraints e.g. cultural and heritage issues and servitudes.

13. SITE SELECTION

- 13.1 Evaluation criteria are to be developed to allow assessment of the site for suitability for the intended purpose. Criteria could include requirements for public transport, potential to meet future service demand, local support services, physical site requirements, size of site in proportion to service delivery strategies, financial benefits, municipal priorities and other future service requirements in proximity to the site and potential to collate or share facilities and services. A report should be prepared by the Service Department outlining the reasons for selecting the site as this will form the basis of the mandatory consultation process.
- 13.2 The Municipality's Municipal Land Audit (MLA) will contain essential, surplus and under utilised properties. The Municipal Manager is required to review/consult the MLA to determine if suitable properties are available prior to any decision being made on seeking property on the open market.

14. VALUATIONS

- 14.1. Valuations are required in support of an acquisition decision and must be at current market valuation as determined by a qualified valuer(s).

15. METHODS OF ACQUIRING IMMOVABLE PROPERTY

The Municipality may acquire land by:

- 15.1 Open market (selection in a particular area/location of a suitable site)
The Municipality usually acquires land through the open marketplace by either public auction or private sale.
- 15.2 Private treaty agreement (for site specific acquisition)
Private treaty contracts are suitable where the property has clear title or where clear title is reasonably achievable and the owner is willing to negotiate on reasonable terms.
- 15.3 Acquisition by expropriation
This method should not be used unless acquisition by agreement has been rejected as being unsuitable or has been unsuccessful in gaining agreement and it can be shown that the property need is site specific and essential.

16. MANDATORY CONSULTATION

- 16.1 Council shall not acquire land unless it has -
- (a) advertised its intention to acquire such immovable property; and
 - (b) considered the objections (if any) lodged in accordance with the advertisement contemplated in subsection (a).
- 16.2 When advertising its intention as contemplated above, all material information relevant to the proposed transaction must be included in the advertisement, including, but not limited to the following:-
- (a) the description of the property, including the title description, street address if applicable and extent;
 - (b) the contracting parties;
 - (c) reason(s) for proposed acquisition;

- (d) the purchase price or lease amount of the property;
- (e) market value of property;
- (f) how the acquisition is to be financed;
- (g) whether the transaction is reflected in the current budget; and
- (h) whether other alternatives have been considered.

16.3 If it is reasonable and justifiable in the circumstances, the Municipal Manager may depart from the above requirements. In determining whether such departure is reasonable and justifiable, the Municipal Manager must take into account all relevant factors, including-

- (a) the objects of the proposed transactions;
- (b) the nature and purpose of, and the need to take the decision;
- (c) the likely affect of the action;
- (d) the urgency of taking the action or the urgency of the matter; and
- (e) the need to promote an efficient administration and good governance.

17. APPROVAL PROCESS

17.1 Following the advertisement contemplated above, the Property Administration Department shall compile an agenda item, motivating the acquisition of the property(s) or rights in property(s). The report should indicate which methods of acquisition was/will be used and why this specific method has been decided on.

17.2 The report must be considered by the person/committee who has the delegated authority to consider such application.

CHAPTER 5: DISPOSAL OF IMMOVABLE PROPERTY AND RIGHTS IN IMMOVABLE PROPERTY

18. AUTHORITY TO DISPOSE OF IMMOVABLE PROPERTY

18.1 Council may in terms of Section 14 of the MFMA, read with the MATR, dispose of immovable property or rights in immovable property by way of sale, letting or registration of a servitude once it is satisfied that such property or rights is not required to provide the minimum level of basic municipal services and once it has considered the fair market value thereof as well as the economic and community value to be received in exchange for such property or right.

19. DISPOSAL MANAGEMENT PRINCIPLES

19.1 Core Principles

In terms of section 14(5) of the MFMA, a Disposal of Property by the Municipality must be fair, equitable, transparent, competitive, and consistent with the Municipality's SCM Policy ("the Core Principles").

19.2 General Principles pertaining to the disposal of immovable property and rights in immovable property.

19.2.1 Unless otherwise provided for in this policy, the disposal of viable immovable property shall be affected -

- (a) by means of a process of public competition; and
- (b) at market value except when the public interest or the plight of the poor demands otherwise.

19.2.2 All transactions for the disposal of immovable property must be considered in accordance with this policy and other applicable legislation.

19.2.3 Before alienating immovable property or rights in immovable property Council shall be satisfied that alienation is the appropriate action, and that reasonable economic and social return cannot be derived whilst ownership of the immovable property or rights is retained by Council.

- 19.2.4 Council reserves the right to entertain unsolicited bids for the development of viable immovable property for development purposes, with the provision that it abides by Council's strategic objectives and more specifically that it favours the promotion of entrepreneurship and community upliftment.
- 19.2.5 Council may grant occupation of its immovable property prior to the transfer thereof on condition that a suitable sale has been entered into, that the purchase price is paid in full or alternatively that an acceptable financial guarantee is provided to secure the purchase price, that occupational interest is payable at a rate specified by Council and further that Council is indemnified against any and all claims that may arise out of the occupation of the immovable property by the purchaser.
- 19.2.6 Viable immovable property purchased from Council by a first time homeowner shall not, without Council's written consent, be resold within a period of 5 years of the date of transfer.
- 19.2.7 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 unless those assets have been made available during an open process and the relevant official was not involved with the processes and appropriately declared their interest as per paragraph 19.2.8. below.
- 19.2.8 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.

19.3 General principles and guidelines pertaining to the letting by council of immovable property.

- 19.3.1 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.
- 19.3.2 Immovable properties that have been let shall be inspected at reasonable time periods to ensure compliance with the terms and conditions of the agreement of lease.

20. MOST APPROPRIATE USE ASSESSMENT

- 20.1 Before a property is declared as surplus, and earmarked for disposal, it must first be assessed for its most appropriate use.
- 20.2 The most appropriate use for a surplus property is one which achieves an optimum balance between the following three key elements of sustainable development:
 - (a) the protection of ecological processes and natural systems;
 - (b) the optimum financial return to and economic development of the municipal area; and
 - (c) the enhancement of the cultural, economic, physical and social wellbeing of people and communities.
- 20.3 The three elements of sustainability will apply to all surplus properties, however their significance and the relationships between them will vary for individual properties.
- 20.4 In determining the most appropriate use of surplus properties, regard should be given to:
 - (a) Spatial development framework(s);
 - (b) Regional plans;
 - (c) Sectoral studies/plans;
 - (d) Government policies;
 - (e) Relevant legislation; and
 - (f) the views of interested and affected parties.
- 20.5 Where appropriate, opportunities should be provided for community involvement in the assessment process.

21. METHODS OF DISPOSAL

Subsequent to determining the most appropriate use of a property and then having decided that the property should be disposed of, the method of disposal should be determined.

Council may use any of the following methods of disposal, depending on the circumstances pertaining the specific property:

A. Competitive Processes - Formal Tender

21.1 Public Auction

21.1.1 Disposal by public auction may be appropriate where there is no obvious potential purchaser and where the best price can be obtained by auction.

21.1.2 The decision to dispose of immovable property by way of public auction must be recorded in writing and must include-

- a) the reasons justifying a disposal by public auction;
- b) the reserve price, if any, for the auction;
- c) the authority for a staff member to attend the auction and to act on behalf of the Council on the disposal.

21.1.3 The contract for sale or lease must be ready for exchange at the auction.

21.1.4 The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.

21.1.5 The terms and conditions of each auction shall be determined on a project-by-project basis, appropriate to the specific characteristics and attributes of the Immoveable Property, and to the Municipality's strategic objectives.

- a) Where the services of an auctioneer are utilised, the auctioneer's commission shall be payable by the successful bidder and shall not form part of the financial offer to the Municipality.

21.2 Closed Tender

21.2.1 If a non-viable property has more than one adjacent owner and if such a Property is capable of being consolidated with more than one of the properties owned by such adjacent owners, then a closed bid will be called for from all the registered owners of all the adjacent properties with which the Property can be consolidated.

21.3 Unsolicited proposals

21.3.1 It is important that the municipality is in a position to entertain unsolicited proposals in exceptional circumstances. Such proposals may *inter alia* include property development proposals, land sales and leases. In this regard the following principles will apply:

- a) Proposals received will be analysed and evaluated by the municipality;
- b) Realistic propositions will be advertised in the media to elicit competitive proposals or objections from the public;
- c) Should the advertisement elicit a response from the market, then a competitive proposal call will be initiated by means of an invitation to bid;
- d) The final lease or sale transaction will be submitted to the council for approval;

B. Non-Competitive Processes: Private Treaty Agreements

21.4 Non-Viable Property

In respect of Non-Viable Property which can only be utilised by one adjacent land owner, a Property Transaction(s) may be approved without any competitive process having been followed, including in response to an unsolicited application, on the basis that no purpose would be served by a competitive process.

Viabale Property: Deviation from a Competitive process

21.4.1 The Municipal Manager may dispense with the competitive processes established in this policy, and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances: –

- a) In an **emergency**; or
- b) due to **specific circumstances** peculiar to the property under consideration, it can only be utilized by the one person/organization wishing to enter into the Property Transaction; or
- c) the person wishing to enter into the Property Transaction is the **sole provider** of the service or product in respect of which the property will be used and the use of the Property is inextricably linked to the provision of that service or product;
- d) the Municipal Manager is satisfied that the Property Transaction will be **exceptionally beneficial** to, or have exceptional cost advantages for the Municipality which would not be realised if a competitive process were to be followed by the Municipality; or will be exceptionally beneficial to the community or the natural environment;
- e) in **exceptional cases** where the Municipal Manager is of the opinion the public competition would not serve a useful purpose or that it is in the interest of the community and the council, and where none of the conditions as set out in the policy provides for such exception, is permitted, and where they are not in conflict with any provision of the policy. In such cases the Municipal Manager must record full reasons for preferring such out-of hand sale or lease to those by public competition.
- f) where it is **impractical or impossible** to follow one or more of the Competitive Processes referred to above. In such an event the following factors must be considered –
 - i) pursuant to the Property Transaction, whether the Property will be used for a public purpose by the Municipality's local community; and/or
 - ii) whether the Municipality is satisfied that the Property Transaction will be exceptionally beneficial to, or have exceptional cost advantages for, the Municipality;
- g) where unsolicited applications/proposals are received from **telecommunication companies** to construct or put-up communication infrastructure on Council owned Property, such as masts, dishes, ect.
- h) where **encroachment** applications are received from adjoining owners;
- i) where sale by **public competition has failed** to attract a purchaser and it can be established that further efforts to dispose of the property by public competition are likely to fail;
- j) where the **applicant** is an **organization receiving funding support from a government department-**
which makes a substantial contribution towards the outputs of such a government department; or
whose contribution to such government departments outputs would depend upon or be substantially enhanced by gaining priority to a particular property;

- k) **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. The existing tenant shall give notice of the intention to renegotiate the lease at least six months before the date of termination.
- l) an **owner** of fixed immovable property who leases Council immovable property, may be **substituted by a successor-in-title** as deemed necessary on the same terms and conditions and/ or additional terms and conditions.
- m) immovable property may be let by Private Treaty to **social care** users. Rentals shall be determined in terms of the tariff rentals as approved by Council from time to time and in such cases, the Lessee shall accept responsibility for the maintenance of the immovable property and any improvements thereon.

21.4.2 The Municipal Manager must record the reasons for any such deviation and report them to Council and include them as a note to the Annual Financial Statements.

21.5 Key principles and guidelines pertaining to the disposal and letting of immovable property for social care uses

21.5.1 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.
- (b) Childcare facility insofar as it contributes to the functioning of a multi-use childcare facility and is operated on a non-profit basis.
- (c) 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 and care of animals.

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

21.5.3 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.

22. DECISION-MAKING PROCESS

22.1 Disposals

22.1.1 **Properties that cannot be disposed of** - the Municipality may not Dispose of a Property needed to provide the minimum level of basic municipal services, save where the Disposal is to another Organ of State, as provided for in section 14(6) of the MFMA read with Chapter 3 of the MATR.

22.1.2 **Exempted Disposals to Organs of State** - In the circumstances prescribed in Chapter 3 of the MATR, Disposals of Property to other Organs of State are exempted from the requirements of sections 14(1) to (5) of the MFMA. Broadly speaking, such Disposals are so exempted where the Disposal is for a public purpose, as opposed to a Disposal in the course of an ordinary commercial transaction between the Municipality and the Organ of State (in which case the Disposal does not qualify as an exempted Disposal).

- 22.1.3 Where the requirements stipulated in Chapter 3 of the MATR are met, then notwithstanding the fact that a Disposal may be in respect of a Property which is required to provide the minimum level of basic municipal services, such a Disposal does not have to comply with this policy, does not have to be at market value and does not require the public participation process prescribed in the MATR in respect of non-exempted Disposals.
- 22.1.4 **Section 14 (Non-Exempted) Disposals** - In respect of Disposals which are subject to sections 14(1) to (5) of the MFMA, the Municipality may Dispose of such Property only after the following requirements are met –
- a) the Council, in a meeting open to the public, must have decided on reasonable grounds that the Property is not needed to provide the minimum level of basic municipal services;
 - b) the Council must have considered the fair market value of the Property and the economic and community value to be received in exchange for the Property;
 - c) any such Disposal must be in accordance with the principles of fairness, equitability, transparency, competitiveness and cost effectiveness.
- 22.1.5 In respect of section 14 (non-exempted) Disposals, the provisions of Chapter 2 of the MATR, which provides the framework for the implementation of these aspects of section 14 of the MFMA, must also be complied with.
- 22.1.6 Part 1 of Chapter 2 of the MATR specifies a process for decision-making by a municipality.
- 22.1.7 The first phase in the process of decision-making is public participation. In terms of the MATR, this phase applies only to a High Value Property and includes:
- a) a request to Council, accompanied by an Information Statement, to authorise the Municipality Manager to conduct a public participation process;
 - b) the Municipality Manager conducting a public participation process as prescribed in the MATR.
- 22.1.8 Once the public participation phase of the decision-making process has been completed, Council is required to take decisions in respect of the Disposal.
- 22.1.9 The first decisions which the Council has to make are determinations in terms of section 14 of the MFMA -
- a) on reasonable grounds, that the Property is not needed to provide the minimum level of basic municipal services; and
 - b) consideration of the fair market value of the Property and the economic and community value to be received in exchange for the Property, (“the Section 14 Determinations”).
- 22.1.10 The second decision that Council has to make, as a consequence of the Section 14 Determinations, is in respect of whether or not to approve in principle that the Property may be Disposed of (“an In Principle Approval”).
- 22.1.11 The MATR prescribes factors that the Council must consider when making the Section 14 Determinations and when considering whether to grant an In Principle Approval.
- 22.1.12 The Council may give an In Principle Approval subject to any conditions, including but not limited to, those specified in the MATR. If an In Principle Approval is granted subject to conditions, and one of the conditions is not met, the In Principle Approval for the Disposal automatically falls away.
- 22.1.13 The MATR do not specify any further decision-making steps to be taken by Council once Council has made the Section 14 Determinations and granted an In Principle Approval, subject to compliance with further MATR processes.

- 22.1.14 The MATR do, however, specify that a municipality may Dispose of a Property only if such Disposal is in accordance with the Disposal Management System and that it may only commence with disposal management processes once an In Principle Approval has been granted by Council.

CHAPTER 6: CONTRACTUAL OBLIGATIONS

23. TERMS AND CONDITIONS OF SALE

- 23.1 Regulations 17 and 30 of the MATR sets out the minimum terms and conditions that needs to form part of Sales Agreements. The terms and conditions listed below is supplementary to the above.
- 23.2 All costs pertaining to a transaction, such as survey-, re-zoning-, sub-division-, consolidation-, advertisement- and relocation or provision of services cost shall be borne by the applicant.
- 23.3 Where applicable, existing services shall be secured by means of the registration of a servitude in favour of Council.
- 23.4 When immovable property is sold, development must commence where, applicable, within 1 (one) 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. Council furthermore reserves the right to impose such conditions as deemed necessary, including a reversionary or penalty clause in the event that the development has not progressed as per the agreement.
- 23.5 Save the prior approval, the immovable property may only be used for the purpose as approved by Council and purpose regularized by Town Planning Schemes.
- 23.6 A suspense condition clause shall be applicable to all transactions which are subject to the approval of a re-zoning, sub-division, consolidation etc.

24. CONDITIONS OF LEASE

- 24.1 Regulation 45 of the MATR sets out the minimum terms and conditions that needs to form part of Lease Agreements. The terms and conditions listed below is supplementary to the above.
- 24.2 All cost pertaining to a transaction such as legal-, survey-, re-zoning-, sub-division-, consolidations-, advertisement-, relocation or provision of services cost shall be borne by the applicant.
- 24.3 The following deposits shall apply to leases where the rental is based on market value-
- (a) a deposit equal to 2 months rental for commercial transactions;
 - (b) a deposit equal to 1 month's rental for residential transactions.
 - (c) a deposit equal to 1 year's rental for social services transactions;
- 24.4 An owner of fixed immovable property who leases an adjoining municipal immovable property may be substituted by his successor in title for the duration of the remainder of the lease term on the same terms and conditions or additional terms and conditions as deemed necessary.
- 24.5 Lessees shall be liable for payment of rates, unless otherwise approved by Council.
- 24.6 Lessees shall indemnify Council against any possible claims arising from the lease or use of the immovable property.
- 24.7 No lessee of immovable property shall without the prior consent in writing of the Council, sublet such property or any portion thereof or assign any right acquired by him in respect hereof and any such subletting or assignment without such consent shall be null and void.
- 24.8 Save with prior approval the property may only be used for the purpose for which it was let and purposes regularized by town planning schemes.
- 24.9 Officials from Council shall at all reasonable times be entitled to enter/inspect the immovable property, having regards for the right to privacy as contemplated in Chapter 2 of the Constitution.

24.10 All agreements shall contain a clause which requires that improvements provided 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 by the lessee, has been cancelled. Provision must also be made on how to deal with such improvements should Council terminate the contract prior to the lapse of the lease period, where the lessee has not been in default.

24.11. Lease of municipal commonage land for small scale farming purposes:

- 24.11.1. The council may lease land to small scale farmers at a rate below market value in order to:
- a. To open opportunities for small scale farming to previously disadvantaged individuals residing within the Cape Agulhas Municipal areas; and
 - b. To enhance the principles of poverty alleviation and black economic empowerment
- 24.11.2. As and when land becomes available, council will:
- a. decided to invite applicants by public advertisement; and/or
 - 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 land
- 24.11.3. The process will be fair, transparent and competitive and therefore applications will be advertised for public comment and Council will consider inputs.

24.12 Term of lease not exceeding one year:

- 24.12.1. The letting of vacant immovable property for periods not EXCEEDING TWELVE (12) MONTHS without an option to renew, may be approved by the MUNICIPAL MANAGER subject to the following conditions:
- 1) Where applicable the general lease conditions as above, shall apply.
 - 2) Immovable property let for short term events, i.e.e. 14 days for circuses, etc, shall be subject to at least the following:
 - Where applicable, applicant to provide or arrange with council at the applicant's cost for services, i.e.e. refuse, water, electricity, ablution facilities, ect:
 - Applicants shall return land in its original condition
 - Rental as per tariff as approved by council
 - Applicant shall indemnify council against any claims against council as a result of lease; and
 - All safety precautions will be in place and approved by the safety officers of the Municipality as well as the District Municipality
 - Applicant shall undertake in writing to compensate council for any damages caused to council's property which may arise in any circumstances whatsoever.

24.13. Extension of lease contracts:

Lease contracts with existing tenants of immovable properties may be renewed without calling for tender only if:

- 24.13.1. the lease has an option in terms of existing contract, to extend the lease; or
- 24.13.2. if council is of the opinion that it will not be in Council's interest to call for tenders or that renewal is aligned to council's strategic objectives and in the interest of the whole community. The reasons for such decision must be recorded in the minutes of such meeting.

24.14. Sale of immovable property to churches:

The sale of immovable property to churches shall be dealt with in terms of this policy:

Additional Factors to be taken into account for the allocation of immovable property to places of worship are the following:

- 24.14.1. Proof of membership of minimum of 200 persons residing in the municipal area who has been a member of the relevant church.
- 24.14.2. confirmation of financial position to develop the church within two years must be provided. If not, the land falls back to council.
- 24.14.3. whether the denomination has previously received land
- 24.14.4. whether alternative institutional land exists

- 24.14.5. whether or not welfare type facilities/activities will be provided in addition to religious facilities; and
 - 24.14.6 whether or not the congregation/membership is drawn from the area in which a site is being applied for.
 - 24.14.7 Conditions for allocation:
 - a. Only one property per town is allocated to a specific congregation of a church/religious institution.
 - b. The property allocated must be developed within 24 (twenty four) months of transfer of the property in the name of the religious association. A building plan for the development of the property must be submitted to the municipality for approval within 3(three) month and be completed for use within the period of 36 (thirty six) months permitted and be calculated from the date of transfer of the property.
 - c. The property is 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 with prior approval of council
 - d. Transfer of property allocated must be transfer within three (3) months of notice of allocation, failing which the offer will lapse.
- 24.15. Tender documents for the sale of land to churches shall include a prescribed application form which shall require applicants to supply inter alia the following details: -
- List of members
 - a constitution
 - details of the proposed use and development program as well as a letter of support from the local community
 - information as required in terms of the above.

CHAPTER 7: FAIR MARKET VALUE / RENTAL

25. CRITERIA FOR DETERMINING COMPENSATION AND FAIR MARKET VALUES

- 25.1 Property may be Disposed of only at market-related prices, except when the plight of the poor or other public interest factors which impact on the economic and community value to be received by the Municipality demand otherwise.
- 25.2 If the Municipality, on account of the public interest, particularly in relation to the plight of the poor, intends to Dispose of a Non-Exempted Property for less than market value it must consider the following factors:
 - (a) the interests of the State and the local community;
 - (b) the strategic and economic interests of the municipality, including the long-term effect of the decision on the municipality;
 - (c) the constitutional rights and legal interests of all affected parties;
 - (d) whether the interests of the parties to the transfer should carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and
 - (e) whether the local community would be better served if the capital asset is transferred at a less than its fair market value, as opposed to a transfer of the asset at fair market value.
- 25.3 Subject to Council's Section 14 Determinations and an In Principle Approval in respect of a specific Disposal, the Municipality shall Dispose of social care properties at a purchase price of between 10% and 25% of fair market value subject to a suitable reversionary clause being registered against the title deed of the Property. In the event of the subject property ceasing to be used for the purpose originally intended, reversionary rights are triggered and the Municipality reserves the right to demand compensation equal to the difference between the actual purchase price and the current fair market value of the property, or that the property be transferred into the ownership of the Municipal at no cost to the Municipality.
- 25.4 If the Municipality appoints a private sector party or Organ of State through a competitive bidding process as the service provider of a Commercial Service, the compensation payable to the Municipality in respect of the Disposal of Property as an integral component of the performance of that Commercial Service to that service provider, shall reflect fair market value.

25.5 Fair market value of properties will be calculated as the average of the valuations sourced from two service providers, unless determined otherwise by the Municipal Manager, taking into account the value of the property *and* the cost of obtaining such valuations.

26. CRITERIA FOR DETERMINING OF FAIR MARKET RENTALS

26.1 Property may only be let at market-related rates, except when the plight of the poor or other public interest factors which impact on the economic and community value to be received by the Municipality demand otherwise.

26.2 In respect of certain categories of Property, the Municipality shall be entitled to adopt below market-related tariffs in respect of Property Rights, including but not limited to leased to non-Profit Organisations, NGOs, Sporting Bodies, *bona fine* small farmers, ect.

26.3 Market rentals of individual properties will be calculated as the average of the valuations sourced from two service providers, unless determined otherwise by the Municipal Manager, taking into account the estimated rental(s) *and* the cost of obtaining such valuations.

CHAPTER 8: MISCELLANEOUS

27. MUNICIPAL LAND REGISTER (MLR)

27.1 The MLR is a excel database that contains details of all municipal-owned property.

27.2 The MLR must indicate for every Municipal owned property:

27.2.1 The erf number of the property

27.2.2 The use of every erf

27.2.3 The zoning of every property

27.2.4 An description of the buildings on the relevant erf

27.2.5 The current carrying value of each erf. (General valuation value)

The properties as listed in the Municipal Land Register must be insured.

28. STRATEGIC IMMOVABLE PROPERTY MANAGEMENT PLAN

28.1 As soon as possible after the approval of this policy Council must, as part of its strategic planning process, develop and adopt a Strategic Immovable Property Management Plan.

28.2 Such a Strategic Immovable Property Management Plan must consist of at least-

28.2.1 A strategic analysis of Council-owned immovable property portfolio (Land Audit).

28.2.2 Categorisation of such land-holdings, to include, but not limited to :-

a) land of strategic importance for, *inter alia*:-

i housing purposes;

ii municipal infrastructure; and

iii public transport, -parking and related used properties.

b) Land that should be retained for future generations;

c) Surplus land, capable of being developed.

d) Land that should be acquired for strategic purpose.

28.2.3 Land that should be exchanged for strategic purposes.

28.2.3 A management plan for each category of immovable property.

28.2.4 A performance assessment of each category of immovable property.

28.2.5 The maintenance activities required for each category of immovable property.

- 28.3 The Strategic Immovable Property Management Plan must be developed within the context of approved spatial development frameworks, sectoral plans, planning related policies, regional plans and the property maintenance plan.
- 28.4 When developing the Strategic Immovable Property Management Plan, the public should be given ample opportunity to make inputs.
- 28.5 Council must annually revise its strategic immovable property management plan and must incorporate the revised plan into its IDP.