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Asset Transfer Policy

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1. DEFINITIONS

For purposes of this policy, unless otherwise stated, the following definitions shall apply:

“capital asset”

- (a) any immovable asset such as land, property or buildings; or
- (b) any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods or services, for rental to others or for administrative purposes, and from which future economic or social benefit can be derived, such as plant, machinery and equipment;

“competitive bid” in respect of a capital asset, the process in terms of which written bids are invited, evaluated and allocated in a prescribed manner for the acquisition of a capital asset of the municipality;

“competitive process” may include competitive bidding, closed bidding, public auction and a proposal call;

“Constitution” the Constitution of the Republic of South Africa, 1996;

“disposal” in relation to a capital asset, includes-

- (a) the demolition, dismantling or destruction of the capital asset; or
- (b) any other process applied to a capital asset which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership;

“exempted capital asset” means a municipal capital asset which is exempted by section 14(6) or 90(6) of the Act from the other provisions of that section;

“fair market value” in relation to a capital asset, means the value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell the capital asset in an arm's length transaction;

“high value” in relation to a capital asset of a municipality or municipal entity, means the fair market value of the capital asset where such value exceeds one per cent of the total value of the capital assets of the municipality or municipal entity, as determined from the latest available audited annual financial statements of the municipality or entity.

“immovable assets” include, but is not limited to –

- (a) immovable property or any share therein registered in the name of a person or entity, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person or entity;
- (b) a right to an exclusive use area held in terms of a notarial deed of cession;
- (c) a real right registered against immovable property in the name of a person or entity, excluding a mortgage bond registered against the property;
- (d) any share in a share block company as defined in section 1 of the Share Blocks Control Act, 59 of 1980;
- (e) a public place or public street;
- (f) immovable property as defined in section 107 of the Deeds Registries Act, 47 of 1937; and
- (g) property consisting of land, buildings, improvements or structures attached to the land;

“MFMA” the Municipal Finance Management Act, 2003 (Act 56 of 2003) and any regulations promulgated in terms thereof;

“municipality” the Drakenstein Municipality and includes any official or committee authorised to make decisions with regard to the disposal or acquisition of immovable capital assets;

“MATR” the Municipal Asset Transfer Regulations promulgated in terms of the MFMA (GG 31346 of 22 August 2008);

“non-exempted capital asset” means a municipal capital asset which is not exempted by section 14(6) or 90(6) of the Act from the other provisions of that section;

“non-viable assets” 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 owner’s property;

“restitution of a right in land” means-

- (a) the restoration of a right in land; or
- (b) equitable redress;

“restoration of a right in land” means the return of a right in land or a portion of land dispossessed after 19 June 1913 as a result of past racially discriminatory laws or practices;

“restitution” means the restitution of rights as regulated in terms of the Restitution of Land Rights Act 1994 (Act 22 of 1994)

-“**SCM Policy**” the supply chain management policy of the municipality as adopted in terms of section 111 of the MFMA;

“**viable assets**” means property that shall be deemed to be property that can be developed and function as a separate entity and can be registered as a separate entity in a Deeds Registry.

CHAPTER 1: GENERAL PROVISIONS

2. APPLICATION

2.1 This policy is applicable to the disposal and management of all capital assets of the municipality as well as the granting of rights to use, control or manage municipal capital assets.

3. LEGISLATIVE FRAMEWORK

3.1 This policy is subject to the provisions of the following legislation-

3.1.1 The MFMA and in particular section 14¹ thereof which governs the disposal of capital assets of the municipality;

3.1.2 The MATR which regulates-

3.1.2.1 The disposal and transfer of municipal capital assets; and

3.1.2.2 The powers of the municipality to grant rights to lease, use, control or manage capital assets;

3.1.3 The municipality’s SCM policy as adopted in terms of the MFMA; and

3.1.4 Any other legislation pertaining to immovable property.

4. OBJECTIVES AND PRINCIPLES

4.1 To provide a practical framework for the management and administration of the

¹ (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 subsection (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.

municipality's assets; to determine the various categories of assets in order to regulate its use, disposal and acquisition and to establish criteria for evaluation of transactions and lay down procedures in respect of the various categories of transactions.

- 4.2 The municipality realises that assets held by it which is not envisaged for or already used for public purposes or in the public's interest, should be dealt with in a manner which will ensure the greatest benefit to the municipality and the community.
- 4.3 Assets will be sold or let at a reasonable market value except when the public interest or the plight of the poor demands otherwise.
- 4.4 The market value of property for the purposes of disposal or letting shall be determined in terms of regulation 5(4) and (5)² of the MATR and shall be determined by an independent valuer.

² (4) The value of a capital asset must for purposes of subregulation (3)(b)(i) be determined in accordance with the accounting standards that the municipality is required by legislation to apply in preparing its annual financial statements.
(5) In the absence of sufficient guidance in those accounting standards regarding the valuation of capital assets, any of the following valuation methods must be applied-

- (a) historical cost of the asset, adjusted for accumulated depreciation and any impairment losses as at the proposed date of transfer or disposal;
- (b) fair market value of the asset;
- (c) depreciated replacement cost of the asset; or
- (d) realisable value of the asset.

- 4.5 Where the municipality intends to dispose of or let assets for less than its fair market value, the considerations in regulations 7³ and 13(2)⁴ of the MATR must be taken into account.
- 4.6 In terms of section 14(5) of the MFMA any transfer of ownership of a capital asset must be fair, equitable, transparent and competitive.
- 4.7 Notwithstanding the provisions of paragraph 4.6 the municipality may authorise the direct disposal of immovable assets in the circumstances listed in paragraph 13 provided that before such direct disposal is finally approved, the general public be afforded an opportunity to submit counter offers to acquire the asset, where after the application and the counter offers must be considered by Council.
- 4.8 To give effect to section 40(1) of the municipality's SCM policy.

5. POWERS OF THE MUNICIPALITY

- 5.1 The municipality may, in achieving its operational and strategic objectives-

³ The municipal council must, when considering any proposed transfer or disposal of a non-exempted capital asset in terms of regulation 5(1)(b)(i) and (ii), take into account-

- (a) whether the capital asset may be required for the municipality's own use at a later date;
- (b) the expected loss or gain that is expected to result from the proposed transfer or disposal;
- (c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality;
- (d) the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests;
- (e) the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long- term or short-term borrowings in the future and its financial position and cash flow;
- (f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
- (g) the estimated cost of the proposed transfer or disposal;
- (h) the transfer of any liabilities and reserve funds associated with the capital asset;
- (i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;
- (j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury;
- (k) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- (l) compliance with the legislative regime applicable to the proposed transfer or disposal.

⁴ (2) If a municipality or municipal entity on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted capital asset for less than its fair market value, the municipality or entity must, when considering the proposed transfer, take into account-

- (a) the interests of-
 - (i) the State; and
 - (ii) the local community;
- (b) the strategic and economic interests of the municipality or municipal entity, including the long-term effect of the decision on the municipality or entity;
- (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 less than its fair market value, as opposed to a transfer of the asset at fair market value.

- 5.1.1 use, improve, benefit there from, dispose, let or allow its immovable assets to be developed or occupied or to permit it to be enclosed and cultivated;
- 5.1.2 acquire assets and rights in assets by way of private treaty, cession, donation and expropriation;
- 5.1.3 dispose of assets and rights in assets by way of direct sale, competitive bidding, auction and direct negotiation.
- 5.1.4 let assets on a long term or short-term basis by way of direct negotiation or competitive bidding.
- 5.1.5 subject to paragraph 4.5 determine subsidised selling prices, lease or rights to use tariffs in respect of assets;
- 5.1.6 acquire and dispose of assets by means of exchange;
- 5.1.7 lease assets for own purposes where necessary; and
- 5.1.8 exercise such other competencies as may be reasonably necessary, or incidental to the effective performance of its functions.

CHAPTER 2: DISPOSAL MANAGEMENT

6. DISPOSAL MANAGEMENT SYSTEM

The disposal management system in this policy comprises of competitive as well as non-competitive processes.

6.1 Competitive processes

- 6.1.1 In terms of section 14(5) of the MFMA, disposal of assets by the municipality must be fair, equitable, transparent, competitive and consistent with paragraph 40 of the municipality's SCM Policy.
- 6.1.2 Provision is made for various disposal options as required by the different categories of assets of the municipality and may include one or more of the following-
 - 6.1.2.1 public auction;
 - 6.1.2.2 competitive bidding;
 - 6.1.2.3 closed bidding;
 - 6.1.2.4 call for applications;
 - 6.1.2.5 call for proposals;
 - 6.1.2.6 release for restitution purposes

7. PUBLIC AUCTION

- 7.1 Viable assets may be alienated by public auction in cases where the municipality is of the opinion that it is in the interest of the community and the municipality.

- 7.2 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 assets, and to the municipality's strategic objectives.
- 7.3 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.
- 7.4 A reserve price, in other words the lowest price at which the municipality will sell the asset, must be determined by Council for the disposal of an immovable asset by public auction.
- 7.5 The sale of an immovable asset to the highest bidder at a public auction is subject to approval by Council.
- 7.6 Where viable assets are offered for sale by public auction and no offer is received, or where assets remain unsold after any other competitive process, the unsold assets may be sold out-of-hand at the reserve price or higher as long as the reserve price corresponds with fair market value.

8. COMPETITIVE BIDDING

- 8.1 The competitive bidding process may involve the call for purely financial offers for the asset offered for alienation.
- 8.2 Depending on the nature of the transaction, competitive bidding may include a two-stage bidding process in terms of which only those bidders that meet the pre-qualification criteria specified in the first stage are entitled to participate in the second stage.
- 8.3 Bids for the purchase and development of land other than residential land must be evaluated based on a functionality assessment of the development proposals and only bidders that pass a pre-determined functionality score may proceed to the second stage which will include the monetary bid.
- 8.4 The City Manager may assign the committees established for the consideration of competitive bids in terms of the SCM policy for the preparation of bid documents, and the evaluation and adjudication of competitive bids in terms of this policy.

- 8.5 After adjudication of a competitive bid, the matter must be referred to Council for a final decision to transfer the asset, but only after 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.

9 CLOSED BIDDING

- 9.1 The closed bidding process may be applied in respect of the disposal of non-viable assets.
- 9.2 If a non-viable asset has more than one adjacent owner and if such an asset is capable of being consolidated with more than one of such adjacent properties, then a closed bid may be called for from all the registered owners of all the adjacent properties with which the asset can be consolidated.

10. CALL FOR APPLICATIONS

- 10.1 The municipality may follow a less formal process in respect of the disposal, granting of rights to use or letting of assets for social care, community, ~~or~~ sport purposes or any other purposes that justify the process.
- 10.2 In terms of this disposal option, applications may be invited in the press from organisations or individuals interested in the acquiring of land. Such applications must be supported by relevant information as requested by the municipality in order to assess the applications.
- 10.3 A fixed selling price/rental must be determined, where applicable, in accordance with par 16.2 and 23 hereof before applications are invited.
- 10.4 Proposals received in terms of this disposal option must be submitted to the relevant political structures for consideration.
- 10.5 A public participation process must be followed.

11. CALL FOR PROPOSALS

- 11.1 The Municipality may call for development proposals in respect of the property identified for alienation and development.
- 11.2 In terms of this disposal option Council must determine a market related selling price in respect of the asset prior to calling for development proposals.
- 11.3 Proposals received in terms of this disposal option must be submitted to the relevant political structures for consideration and recommendation to Council for approval.
- 11.4 Where the type of development required for a capital asset is uncertain, Council may call for development proposals, which do not include a monetary bid, to determine the preferred type of development and development specifications. Such proposals must be submitted to the relevant political structures for consideration and a recommendation to Council on the preferred type of development, the development specifications as well as the disposal option to be followed.

12. RELEASE OF IMMOVABLE ASSETS FOR RESTITUTION PURPOSES

- 12.1 The Municipality may release immovable capital assets to the Department of Rural Development and Land Reform upon formal request from the Regional Land Claims Commission, for the purposes of restitution of rights as envisaged in terms of the Restitution of Land Rights Act 1994 (Act 22 of 1994);
- 12.2 Capital assets released for this purpose shall be disposed of at subsidized prices as applicable to social care, community and sports assets;
- 12.3 Where capital assets released for restitution purposes form part of government programs, such programs will guide the selling prices applicable and may also be “gratis”

13. DISPOSAL BY DIRECT NEGOTIATION

13.1 Non-viable assets

- 13.1.1 In respect of assets which can only be utilized by one or more adjacent land owners, a transaction(s) may be approved by Council without ~~the any formal~~ competitive process as envisaged in paragraph 8 above having been followed, including in response to an unsolicited application, on the basis that no purpose would be served by ~~a formal-such~~ competitive process.

- 13.1.2 Direct disposal of non-viable assets must incorporate the principle of competitiveness by, inviting in the press, other interested parties to submit counter applications or offers. The proposed disposal must also be advertised for objections or comments where after all applications must be considered.
- 13.1.3 Upon approval of a transaction contemplated in paragraph 13.1.1, the City Manager must minute the reasons for the decision.

13.2 Viable assets

- 13.2.1 The Council may dispense with ~~the formal~~ competitive processes as envisaged in paragraph 8 above~~established in this policy~~, and may enter into a transaction through any convenient process, which may include direct negotiation or consideration of an unsolicited application, but only in the following circumstances –
 - 13.2.1.1 where specific circumstances peculiar to the asset has the result that it can only be utilized by the one person/organization wishing to enter into the transaction;
 - 13.2.1.2 where the applicant wishing to enter into the 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;
 - 13.2.1.3 where the council is satisfied that the transaction will be exceptionally beneficial to the municipality or the community, or has exceptional cost advantages for the municipality which would not be realised if a competitive process were to be followed;
 - 13.2.1.4 where the applicant applies for an asset abutting the applicant’s current property which is required for extending its existing establishment/business and such extension will be in the public interest; or
 - 13.2.1.5 any other circumstances where council is of the view that it will not be in the interest of the municipality or of the community in general to follow a competitive process.
- 13.3 Direct disposal of viable assets must incorporate the principle of competitiveness by inviting in the press, other interested parties to submit counter applications or offers. The proposed disposal must also be advertised for objections or comments where after all applications must be considered.
- 13.4 Upon approval of a transaction contemplated in paragraph 13.2.1, the City Manager must minute the reasons for the decision.

14. SOCIAL CARE, COMMUNITY, AND SPORT ASSETS

14.1 Where the municipality receives an application or proposal to acquire assets for social care, community or sport purposes or where an asset is disposed of in the interest of the public or as result of the plight of the poor, the following factors must be taken into account in justifying not following a competitive bidding process-

14.1.1 whether the applicant has historically enjoyed a property right granted by the municipality and has fulfilled and complied with all responsibilities and obligations in terms of the agreement with the municipality;

14.1.2 the exact nature of the social care, community or sport purpose;

14.1.3 whether the social care, community or sport purpose will satisfy a priority need in the community;

14.1.4 whether the municipality is satisfied with the manner in which the applicant gives effect to the social care, community or sport purpose; or

14.1.5 whether the transaction will be exceptionally beneficial to the municipality or the community, or have exceptional cost advantages for the municipality.

14.2 For the purposes of this policy “**social care, community or sport assets**” includes, but is not limited to-

14.2.1 places of worship being used for spiritual gathering and social, pastoral or welfare caring and support to worshippers and the broader community;

14.2.2 childcare facilities insofar as it contributes to the functioning of a multi-use childcare facility and is operated on a non-profit basis;

14.2.3 retirement villages for that portion of the building or facility available to general public use at subsidized or nominal prices;

14.2.4 schools and other government services;

14.2.5 centres utilised as homes for the handicapped and disabled persons;

14.2.6 non-profit rehabilitation centres;

14.2.7 homes/centres for indigent, homeless or destitute persons;

14.2.8 organizations for the homeless and elderly;

14.2.9 youth activity centres;

14.2.10 skills development centres;

14.2.11 non commercial sport facilities;

14.2.12 churches which also render social development services in addition to existing religious activities, or

14.2.13 housing units funded or partly funded by government housing subsidies aiming to promote first time home ownership.

15. PLACES OF WORSHIP

- 15.1 The following factors shall be considered relevant in the selection and allocation of immovable assets to places of worship-
- 15.1.1 the size of the congregation in relation to the size of the available site;
 - 15.1.2 the availability of finance to acquire the site and commence with development within the agreed development period;
 - 15.1.3 whether or not welfare type facilities/activities will be provided in addition to religious facilities;
 - 15.1.4 whether or not the congregation members are drawn from the area in which the asset is situated; or
 - 15.1.5 whether or not the development makes provision for multi-purpose social use which could address the need for other social activities.

16. SELLING PRICES

16.1 Market related prices

- 16.1.1 Immovable assets may be disposed of only at market-related prices, except when the plight of the poor or public interest demand otherwise.
- 16.1.2 Market related selling prices may be discounted in lieu of an immovable capital asset to be developed by the purchaser provided that appropriate guarantees are provided by the purchaser, and/or any other form of community value to be gained by - the ~~m~~Municipality.

16.2 Subsidized prices/rates

- 16.2.1 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 asset for less than market value it must take into account the factors specified in Regulation 13(2) of the MATR.⁵

⁵ (2) If a municipality or municipal entity on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted capital asset for less than its fair market value, the municipality or entity must, when considering the proposed transfer, take into account-

- (a) the interests of-
 - (i) the State; and
 - (ii) the local community;
- (b) the strategic and economic interests of the municipality or municipal entity, including the long-term effect of the decision on the municipality or entity;
- (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 less than its fair market value, as opposed to a transfer of the asset at fair market value.

- 16.2.2 Subject to the factors specified in Regulation 13(2) of the MATR, the municipality may dispose of social care, community or sport assets as well as assets identified for restitution purposes at between 5% and 20% of fair market value subject to a suitable reversionary clause being registered against the title deed of the property.
- 16.2.3 In the event of property mentioned in 16.2.2 ceasing to be used for the purpose originally intended, reversionary rights as contemplated in par 18.10 are triggered and the municipality reserves the right to demand compensation equal to the difference between the purchase price and the current fair market value of the property, or that the property be transferred into the ownership of the municipality at no cost for the municipality.

17. PLIGHT OF THE POOR

Whenever the plight of the poor is a consideration in any decision to be taken in respect of the acquisition, disposal or letting of immovable assets, regard shall be given to the conditions mentioned in regulation 13(2) of the MATR. (See footnote 5)

18. STANDARD CONDITIONS OF SALE

- 18.1 Purchasers shall be responsible for all costs, and where applicable, all action pertaining to a transaction e.g. survey, rezoning, subdivision, consolidation, advertisement, relocation or provision of services, provided that the municipality may decide to waive its right to recover such costs if the reason for the sale is to rid the municipality of the burden to maintain or exercise control there over or where the capital asset will be.
- 18.2 All statutory requirements must be met by the purchaser at his or her own costs. The municipality may on account of the public interest or the plight of the poor, decide to undertake one or more of the statutory requirements at the municipality's cost.
- 18.3 Where applicable, existing services may be secured by means of the registration of a servitude in favour of the municipality or be suitably protected, and costs shall be for the account of the purchaser.
- 18.4 Immovable property which is sold to an adjacent owner, shall be rezoned, closed and consolidated with the purchaser's property at his or her cost.
- 18.5 Development of vacant land sold must commence within such time frames as agreed upon, or in accordance with the conditions of sale, or in accordance with the development program provided by the purchaser and must be completed within a

period stipulated in the deed of sale or the approved development program of the applicant.

- 18.6 The municipality shall have a reversionary right against re-payment of the original purchase price to transfer the property into its name where the purchaser fails to complete the intended development within the agreed time frame. Reversionary rights are applicable to successors in title.
- 18.7 In addition to re-transfer of the property as envisaged in paragraph 18.6, the municipality may require payment for damages in accordance with the provisions of the deed of sale.
- 18.8 The municipality reserves the right to impose such additional conditions as deemed necessary, without limiting its rights to liquidated damage.
- 18.9 The deed of sale may provide for the payment of occupational interest from date of occupation, as agreed upon, until transfer of the property in the name of the purchaser.
- 18.10 A reversionary clause, in terms of which assets will revert to the municipality without cost and free of any claims, shall be applicable to immovable assets sold below market value.
- 18.11 A pre-emptive clause shall be applicable to an undeveloped asset should the purchaser intend to sell such asset or a portion thereof or intend to use it for purposes other than the purposes specified in the transaction conditions.
- 18.12 Immovable property may only be used for the purpose as approved by council and in accordance with the approved town planning scheme.
- 18.13 A deed of sale must be signed within 60 days from the date of official request by the municipality, or within such extended period as may be agreed upon failing which the transaction shall lapse.
- 18.14 A suspensive condition shall be applicable to all transactions that are subject to the approval of land use rights or approvals in terms of other legislation and the municipality may add additional suspensive conditions in respect of any other matter it deems appropriate.
- 18.15 Interest on the purchase price may be charged by the municipality after expiry of a stipulated period from the date of sale, or should payment

or transfer be delayed due to action or failure on the part of the purchaser or during the validity period of suspensive conditions.

19. PROPERTY NOT FOR DISPOSAL

The municipality may not dispose of a property needed to provide the minimum level of basic municipal services,⁶ 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.

20. EXEMPTED DISPOSALS TO ORGANS OF STATE

20.1 The disposal of property to other organs of state are exempted from the requirements of sections 14(1) to (5) of the MFMA⁷. Such exemption shall however only apply if the circumstances listed in regulation 20⁸ of Chapter 3 of the MATR are applicable.

20.2 Where none of the circumstances listed in regulation 20 of the MATR are applicable, and where the transfer to another organ of state is done as part of a normal commercial transaction, it shall be subject to the provisions of sections 14 and 90 of the MFMA.

21. NON-EXEMPTED DISPOSALS (SECTION 14)

⁶ Defined in the Systems Act as, “a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment”.

⁷ See footnote 1

⁸ (1) Section 14(1) to (5) and section 90(1) to (5) of the Act does not apply if a municipality or municipal entity transfers a capital asset to an organ of state in any of the following circumstances:

- (a) When transfer of a capital asset emanates from a review by a municipality of its service delivery mechanisms for the performance of a municipal service in terms of Chapter 8 of the Municipal Systems Act and the municipality appoints another organ of state as the preferred option for the performance of the service;
- (b) when transfer of a capital asset emanates from a reorganisation of powers and functions between a parent municipality and its municipal entity, including asset transfers contemplated in section 84 of the Act;
- (c) when transfer of a capital asset emanates from an assignment of any of the powers or functions of a municipality to another organ of state by national legislation or in terms of a power contained in national legislation, including an assignment of powers or functions following-
 - (i) an adjustment of the division of powers and functions between a district municipality and local municipalities within the district in terms of section 85 of the Municipal Structures Act;
 - (ii) an authorisation in terms of section 84(3) the Municipal Structures Act; or
 - (iii) a re-demarcation of municipal boundaries in terms of the Municipal Structures Act; 18
- (d) when municipal housing or land is transferred to a national or provincial organ of state for housing for the poor or in terms of a national or provincial housing policy;
- (e) when transfer of a capital asset to an organ of state is required or permitted in terms of national legislation and that legislation determines the conditions of the transfer; or
- (f) any other circumstance not provided in paragraph (a) to (e), provided that-
 - (i) the capital asset to be transferred is determined by resolution of the council to be not needed for the provision of the minimum level of basic municipal services and to be surplus to the requirements of the municipality; and
 - (ii) if the capital asset is to be transferred for less than fair market value, the municipality takes into account-
 - (aa) whether the capital asset may be required for the municipality or a municipal entity under the municipality's sole or shared control at a later date;

- 21.1 In respect of non-exempted disposals, sections 14(1) to (5) of the MFMA, as well as Chapter 2 of the MATR, which provides the framework for the implementation of these aspects of section 14 of the MFMA, must be complied with. In terms of section 14(1) to (5) of the MFMA, the municipality may transfer or permanently dispose of such property only after the following requirements are met -
- 21.1.1 a public consultation process as set out in regulations 5(1)(a) and (2) of the MATR must be undertaken in case of a high-value capital asset;
- 21.1.2 the municipality, in a meeting open to the public, must have decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
- 21.1.3 the municipality must have considered the fair market value of the asset and the economic and community value to be received in exchange for the asset⁹.
- 21.2 Because of the determinations in 21.1.2 and 21.1.3 the municipality ~~has to~~must decide on “approval in principle” for the transfer or disposal of the capital asset as required in terms of regulation 5(1)(b)(ii) of the MATR.
- 21.3 The additional factors to be taken into consideration by the municipality for an “approval in principle”, to the extent that they are applicable to each particular case, are set out in regulations 7¹⁰, 11¹¹ and 13(2) of the MATR.
- 21.4 The decision making process in respect of high value capital assets is prescribed by Part 1 of Chapter 2 of the MATR and includes-
- 21.4.1 a request to Council, accompanied by an Information Statement,¹² to authorize the City Manager to conduct a public participation process; and

⁹ See footnote 1.

¹⁰ See footnote 3

¹¹ An approval in principle in terms of regulation 5(1)(b)(ii) or 8(1)(b)(ii) that a non-exempted capital asset may be transferred or disposed of, may be given subject to any conditions, including conditions specifying 12 -

- (a) the way in which the capital asset is to be sold or disposed of;
- (b) a floor price or minimum compensation for the capital asset;
- (c) whether the capital asset may be transferred or disposed of for less than its fair market value, in which case the municipal council must first consider the criteria set out in regulation 13(2); and
- (d) a framework within which direct negotiations for the transfer or disposal of the capital asset must be conducted with another person, if transfer or disposal is subject to direct negotiations.

¹² (b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement approved by the board of directors of the municipal entity stating-

- (i) the valuation of the capital asset to be transferred or disposed of and the method of valuation used to determine that valuation;
- (ii) the reasons for the proposal to transfer or dispose of the capital asset;
- (iii) any expected benefits to the municipal entity that may result from the transfer or disposal;
- (iv) any expected proceeds to be received by the municipal entity from the transfer or disposal; and
- (v) any expected gain or loss that will be realised or incurred by the municipal entity arising from the transfer or disposal.

21.4.2 the undertaking of a public participation process by the City Manager as prescribed in regulation 6 of the MATR.¹³

21.5 The municipality must undertake a public participation process which entails a 30 days' notice in the local press in respect of the intended disposal of immovable capital assets, other than subsidized housing and exempted property.

CHAPTER 3: GRANTING OF RIGHTS TO USE, CONTROL OR MANAGE MUNICIPAL CAPITAL ASSETS

22. PROPERTY RIGHTS

22.1 Chapter 4 of the MATR governs the granting of a property right in circumstances where section 14 of the MFMA does not apply, in other words, where the granting of such rights do not amount to the transfer or permanent disposal of the asset, for example when a right is acquired through a leasing, letting or hiring out arrangement.

22.2 Regulation 33(3) in Chapter 4 of the MATR specifies the circumstances in which a property right must be dealt with as if such granting of a property right is subject to section 14 of the MFMA.¹⁴

23. SUBSIDIZED RATES

23.1 Market related rates will apply to the granting of rights to use immovable property except where the plight of the poor, the public interest as well as the operational needs and strategic objectives of the municipality demand otherwise.

¹³ "The accounting officer must, at least 60 days before the Council meeting at which the Council will make the Section 14 Determinations and will decide whether to grant In Principle Approval for the Disposal, in accordance with section 21A of the Systems Act, to make public the proposal to dispose, together with the Information Statement to invite the local community and other interested persons to submit to the Council comments or representations in respect of the proposed Disposal; and to solicit the views and recommendations of National Treasury and Provincial Treasury."

¹⁴ (3) The granting by a municipality or municipal entity of a right to use, control or manage a capital asset must for the purposes of these Regulations be dealt with in terms of Chapter 2 or 3 as if such granting of a right is a transfer within the meaning of that Chapter, if the right-

(a) is granted for an indefinite or undetermined period;

(b) is granted for a period which exceeds-

(i) the useful life of the capital asset; or

(ii) the economic usefulness of the capital asset and which would require the asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period for which the right is granted; or

(c) confers on the person to whom the right is granted -

(i) option to buy or acquire ownership in the capital asset; or

(ii) the power to use, control or manage the capital asset as if that person is the beneficial (but not legal)

owner of the asset.

23.2 Taking into account the public interest and the municipality’s strategic objectives with regard to the promotion of local economic development, the municipality may allocate business space in municipal buildings to micro and very small enterprises at subsidized rental on the following basis:

- 23.2.1 (a) rental for the first year: 20% of market related rental;
- (b) rental for the second year: 50% of market related rental;
- (c) rental for the third year: 75% of market related rental;
- (d) rental for the fourth year: 100% of market related rental; and

23.2.2 that the phasing in of the rental only be granted once to the same owner;

23.3 In addition to the foregoing the Municipality may in terms of its annual budget, approve fixed rates in respect of the use of assets or classes of assets.

23.4 For the purposes of paragraph 23.2 “micro enterprise” and “very small enterprise” means enterprises as defined in the National Small Enterprises Act, 1996 (Act 102 of 1996), attached as Annexure A.

23.5 The provisions of paragraph 25, with the necessary changes, are applicable to rentals in terms of paragraph 23.

23.6 The municipality may grant rights to use in respect of social care, community or sport assets or in circumstances where the plight of the poor or community interests so demands, at between 5% and 20% of fair market value.

23.7 The granting of rights to use to may be “gratis” in the following circumstances:

23.7.1 Where an authority or service provider renders local government functions as per Schedule 4B and 5B of the Constitution of the Republic of South Africa,1996;

23.7.2 The use of assets for security purposes in residential areas.

24. DECISION MAKING PROCESS FOR GRANTING OF RIGHTS TO USE, CONTROL OR MANAGE MUNICIPAL CAPITAL ASSETS

24.1 Part 1 of Chapter 4 of the MATR specifies a process for decision-making by a municipality in respect of the granting of a right to use, control or manage municipal capital assets.

- 24.2 The consideration of any proposal for the granting of a right to use, control or manage municipal capital assets is subject to the provisions of regulation 36¹⁵ of the MATR.
- 24.3 Where an asset is classified as long-term-high-value, the first phase in the process of decision-making is public participation. In terms of the MATR, this phase applies only to a long-term high-value right and includes-
- 24.3.1 a request to council, accompanied by an Information Statement,¹⁶ to authorize the City Manager to conduct a public participation process; and
- 24.3.2 the City Manager conducting a public participation process as prescribed in the MATR¹⁷.
- 24.4 The City Manager may determine the form that the public participation -process should take.
- 24.5 Once the public-participation phase of the decision-making process has been completed, a decision must be taken by council as to whether to grant an in principle approval in respect of the granting of the property right.
- 24.6 The municipality may delegate its power to authorise a public participation process to the City Manager in respect of a property right with a value of less than R10 million and where a long term right is not granted.
- 24.7 **“Long-term high-value right”** means a property right with a value in excess of R10 million which is granted for a period exceeding three years;

25. STANDARD CONDITIONS OF LEASE

¹⁵ The municipal council must, when considering in terms of regulation 34(1)(b) approval for any proposed granting of a right to use, control or manage a capital asset, take into account-

- (a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- (b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the municipality;
- (c) the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;
- (d) any comments or representations on the proposed granting of the right received from the local community and other interested persons;
- (e) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;
- (f) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
- (g) compliance with the legislative regime applicable to the proposed granting of the right.

¹⁶ See footnote 11

¹⁷ See footnote 12

- 25.1 A lessee shall be responsible for all costs, and where applicable, all action pertaining to a transaction e.g. survey, rezoning, subdivision, consolidation, advertisement, relocation or provision of services, provided that the municipality may decide to waive its right to recover such costs if the transaction is deemed to be in the general interest of the broader community.
- 25.2 No transaction shall be processed unless the applicant has confirmed in writing that he or she will bear all applicable costs as set out in paragraph 25.1 and all other conditions imposed by the municipality will be complied with.
- 25.3 Deposits or equivalent security/guarantees may be applicable to the lease of assets.
- 25.4 No immovable property shall be sub-let, ceded or assigned by the lessee, without the prior written approval of the municipality given by the City Manager or his or her assignee.
- 25.5 An owner of immovable property who leases an adjoining municipal 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.
- 25.6 Rental escalation over the term of the lease shall be calculated at the time of approval to provide for a fixed rental over the lease period.
- 25.7 The lessee shall be liable for payment of service charges unless exempted by Council.
- 25.8 The rental of lanes, public open spaces and road reserves shall be subject to-
- 25.8.1 temporary or permanent closure where necessary;
 - 25.8.2 payment of costs for the re-location or installation of services where necessary; and
 - 25.8.3 protection of services at the cost of the applicant, if required.
- 25.9 The lessee shall indemnify the municipality against claims arising from the lease or use of the property.
- 25.10 The property may only be used for the purposes it is let and purposes allowed by the town planning scheme.
- 25.11 A lease agreement shall be concluded and signed within reasonable time from the date of official request by the municipality failing which the transaction shall lapse and the applicant shall forfeit his or her deposit and be held liable for costs exceeding

the deposit amount.

- 25.12 Officials of the municipality shall be entitled to enter and inspect the leased premises at reasonable times.
- 25.13 The lessee must maintain the leased property, to the extent required in terms of the lease agreement.
- 25.14 Improvements made by the lessee shall revert back to the municipality upon expiry of the lease agreement or in case of cancellation of the agreement as result of non-compliance with conditions. Should the agreement be terminated early at the initiative of the municipality for municipal purposes, the municipality may by mutual agreement compensate the lessee for part of the actual cost of the improvements.

26. SHORT TERM USE

- 26.1 The City Manager may approve the lease of property for periods not exceeding 90 days in circumstances where it is in the interest of the community that the asset be occupied without delay, subject to the following-
 - 26.1.1 the applicant must at his or her cost connect to municipal services if required;
 - 26.1.2 the leased property must be returned to the municipality in its original state and the lessee shall be held liable for any damages caused by him or her to the leased property;
 - 26.1.3 the applicant must indemnify the municipality against claims arising from the lease or use of the property; and
 - 26.1.4 the ~~Administration-municipality~~ promptly implements the necessary procedures for the formal approval of the proposed use right.

27. PROJECTIONS, PROJECTING STRUCTURES, ENCROACHMENTS AND OTHER MINOR RIGHTS TO USE

- 27.1 The municipality may, subject to conditions it may deem necessary, including the payment of rental, permit the erection or retention of a veranda, balcony, or similar structure which projects or encroaches into or over any public place, public street or road reserve.
- 27.2 The following rights to use may also be permitted as depicted in the table below and the necessary authority is hereby granted to the relevant senior managers as stated therein:-

APPLICATIONS FOR RIGHTS TO USE, CONTROL OR MANAGE IMMOVABLE PROPERTY				
No	Type of application	Public consultation	Compensation	Approval by
1	Projections over street sidewalks and road reserves	None	Once off payment as per budget tariffs ¹⁸	Executive Director: Planning and Development as part of building plan process
2.	Minor building works over road reserves (as defined in the National Building Regulations)	2.1 Depending on nature of application place notice in local press 2.2 Applicant to obtain written consent of neighbours where necessary	Once off payment as per budget tariffs	Executive Director: Planning and Development as part of building plan process
3.	Gardening purposes over road reserves/sidewalks	3.1 Depending on nature of application place notice in local press 3.2 Applicant to obtain written consent of neighbours where necessary	Fenced encroachments Once off payment as per budget tariffs Unfenced encroachments No fee	Executive Director: Engineering Services (subject to entering into a temporary encroachment agreement)
4.	Gardening purposes over public places	Notices to surrounding owners as well as notice in the press	Fenced encroachments – Once off payment as per budget tariffs Unfenced encroachments No fee	Executive Director: Planning and Development (subject to entering into a temporary encroachment agreement)

¹⁸ Rentals in this table can also be at less than market value if public interest or the plight of the poor demands otherwise.

5.	Temporary closure of pedestrian lanes and granting of a Use Right for purposes other than for security reasons.	Notice to surrounding owners as well as notice in the press	Market related rental	Executive Mayor
6.	Temporary closure and granting of Use right to adjacent owner to close pedestrian lane for security purposes	Notice to adjacent owners as well as notice in the press	No fee	Executive Mayor
7.	Vehicle access encroachments and paving encroachments	7.1 Depending on nature of application place notice in local press 7.2 Applicant to obtain written consent of neighbours where necessary	Fenced encroachments – Once off payment as per budget tariffs Unfenced encroachments No fee	Relevant Executive Director Executive Director: Engineering Services (subject to entering into a temporary encroachment agreement)
8.	Installation of communication infrastructure on municipal property	Depending on nature of infrastructure, notify owners as well as notice in the press	Market related rental	Executive Mayor
9.	Temporary use of vacant municipal land (maximum 90 days)	Notice in local press depending on nature of use	Non-commercial and municipal related use - No fee.	City Manager
10.	Outside seating for restaurants, taverns, etc.	Notices to surrounding owners as well as notice in the press	Market related rental	Executive Mayor
11.	Once-off letting of town halls and community halls	None	Once off tariffs as per budget	Executive Director: Community Services.

12.	Once-off letting of sports facilities	None	Tariffs as per budget	Executive Director: Community Services.
13.	Way leaves (cables, pipes, electronic communication network etc. under streets, road reserves and public open spaces)	None	Once off tariff as per budget	Executive Director: Engineering Services (subject to entering into an agreement)
14.	Letting of kiosks at municipal swimming pools and municipal resorts (maximum period of 24 months)	Invitation of applications (subject to prior in-principle approval by City Manager)	Tariffs as per budget	Executive Director: Community Services
15.	Letting of municipal dwellings identified for lease to municipal staff (maximum period of 36 months)	None	Tariffs as per budget.	Executive Director: Community Services.
16.	Letting of informal trading spaces/stands (maximum period of 36 months)	Invitation of applications (subject to prior in-principle approval by City Manager)	Tariffs as per budget	Executive Director: Planning and Development
17.	Letting of rooms/space in Thusong Centres and other public facilities under the control of the Executive Director: Community Services (maximum period of 24 months)	Invitation of applications (subject to prior in-principle approval by City Manager)	Tariffs as per budget	Executive Mayor

CHAPTER 4: MANAGEMENT AND DISPOSAL OF MOVABLE ASSETS

28. GENERAL PRINCIPLES

- 28.1 The accounting officer must implement an effective system for the management and disposal of movable assets, including but not limited to unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the MFMA.
- 28.2 Any disposal of a movable asset must be fair, equitable, transparent, competitive and consistent with the SCM policy of Council.

29. DISPOSAL

- 29.1 When Council considers the disposal of movable assets, the following must be complied with-
- 29.1.1 consider the determinations as envisaged in terms of Section 14(2) of the MFMA;
 - 29.1.2 take into account the issues as contained in Regulations 36 of the MATR¹⁹ ;
 - 29.1.3 the general procedures as laid down in Chapters 2 and 4 of the MATR.
- 29.2 A request for assets below the value of R200, 000 to be sold must be submitted to the City Manager by the supply chain management section which must be accompanied by a list of assets to be sold and the reasons for sale.
- 29.3 The City Manager is authorised to dispose of movable assets below a value of R2 million, and to make the determinations in terms of section 14(2) (a) and (b) of the MFMA, provided that, in respect of assets above a value of R200, 000 not being auctioned, the City Manager shall first consider a recommendation from the Bid Adjudication Committee.
- 29.4 Movable assets must be sold at market value unless the public interest or the plight of the poor demands otherwise, in which case the considerations listed under regulation 13(2) of the MATR²⁰, must be taken into account.

30. METHODS OF DISPOSAL

¹⁹ See footnote 15

²⁰ See footnote 4

- 30.1 Movable assets may be sold by-
 - 30.1.1 public auction;
 - 30.1.2 public tender;
 - 30.1.3 written price quotations;
 - 30.1.4 donation; or
 - 30.1.5 any other method which is the most beneficial to Council, except when the public interest or the plight of the poor demands otherwise.

31. ADMINISTRATION

- 31.1 Assets disposed of must be written off and accounted for in the asset register;
- 31.2 Assets earmarked for sale by the asset section must be reclassified as “assets held-for-sale” and must be transferred to the auction store.
- 31.3 The Bid Adjudication Committee, as established by the City Manager in terms of the SCM Policy, is authorised to consider tender evaluation reports and to submit recommendations to the City Manager.

32. CONDITIONS FOR DISPOSAL

- 32.1 Before deciding on a particular disposal method, the following should be considered:
 - 32.1.1 the nature of the asset as determined by the municipal asset section;
 - 32.1.2 the potential market value;
 - 32.1.3 other intrinsic value of the asset as determined by the municipal asset section;
 - 32.1.4 its location;
 - 32.1.5 its volume;
 - 32.1.6 its trade-in price;
 - 32.1.7 its ability to support wider Government programmes;
 - 32.1.8 environmental considerations;
 - 32.1.9 market conditions;
 - 32.1.10 the asset’s life as determined by the municipal asset section.

33. GENERAL CONDITIONS FOR DISPOSAL VIA TENDER OR AUCTION

- 33.1 A notice of the intention of the municipality to sell the asset must be published in a local

newspaper.

33.2 When the public auction or tender route is followed-

33.2.1 the municipality may appoint an independent appraiser to determine the fair market value of the asset; and

33.2.2 the municipality may appoint an independent auctioneer on either a quotation basis or by tender depending on the value of the goods to be disposed of.

34. GENERAL CONDITIONS FOR DISPOSAL VIA WRITTEN PRICE QUOTATION

34.1 Bidders are afforded the opportunity to make a sealed enveloped offer on identifiable items.

34.2 Bids will be opened in public and evaluated in terms of the SCM Policy.

35. GENERAL PRECONDITION FOR DISPOSAL VIA DONATION

35.1 Requests for donations must be motivated to the City Manager in writing for approval.

35.2 Public request for donations received must be submitted to the SCM Section, and will be submitted to the City Manager by way of written report.

35.3 The donation process should be in accordance with the Municipal Grant Policy, as approved.

ANNEXURE A
(Paragraph 23.2)

Column 1	Column 2	Column 3	Column 4	Column 5
Sector or subsector in accordance with the Standard Industrial Classification	Size of class	The total full-time equivalent of paid employees	Total turnover	Total gross asset value (fixed property excluded)
Agriculture	Medium	100	R5m	R5m
	Small	50	R3m	R3m
	Very Small	10	R0.50m	R0.50m
	Micro	5	R0.20m	R0.10m
Mining and Quarrying	Medium	200	R39m	R23m
	Small	50	R10m	R6m
	Very Small	20	R4m	R2m
	Micro	5	R0.20m	R0.10m
Manufacturing	Medium	200	R51m	R19m
	Small	50	R13m	R5m
	Very Small	20	R5m	R2m
	Micro	5	R0.20m	R0.10m
Electricity, Gas and Water	Medium	200	R51m	R19m
	Small	50	R13m	R5m
	Very Small	20	R5.10m	R1.90m
	Micro	5	R0.20m	R0.10m
Construction	Medium	200	R26m	R5m
	Small	50	R6m	R1m
	Very Small	20	R3m	R0.50m
	Micro	5	R0.20m	R0.10m
Retail and Motor Trade and Repair Services	Medium	200	R39m	R6m
	Small	50	R19m	R3m
	Very Small	20	R4m	R0.60m
	Micro	5	R0.20m	R0.10m
Wholesale Trade, Commercial Agents and Allied Services	Medium	200	R64m	R10m

	Small	50	R32m	R5m
	Very Small	20	R6m	R0.60m
	Micro	5	R0.20m	R0.10m
Catering, Accommodation and other Trade	Medium	200	R13m	R3m
	Small	50	R6m	R1m
	Very Small	20	R5.10m	R1.90m
	Micro	5	R0.20m	R0.10m
Transport, Storage and Communications	Medium	200	R26m	R6m
	Small	50	R13m	R3m
	Very Small	20	R3m	R0.60m
	Micro	5	R0.20m	R0.10m
Finance and Business Services	Medium	200	R26m	R5m
	Small	50	R13m	R3m
	Very Small	20	R3m	R0.50m
	Micro	5	R0.20m	R0.10m
Community, Social and Personal Services	Medium	200	R13m	R6m
	Small	50	R6m	R3m
	Very Small	20	R1m	R0.60m
	Micro	5	R0.20m	R0.10m