



# **THE DISPOSAL OF MUNICIPAL LAND AND OTHER IMMOVABLE CAPITAL ASSETS POLICY DIHLABENG LOCAL MUNICIPALITY**

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## 1. INTRODUCTION

- 1.1 The purpose of this Policy for the Disposal of the Municipality's immovable Capital Assets ("the Disposal Policy") is to 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, in a manner that primarily promotes Broad Based Black Economic Empowerment through property ownership, development and use as well as first time entry of previously disadvantaged individuals into the property market.
- 1.2 The Municipality's land and other immovable capital assets shall be disposed of in the manner as provided for in paragraph 7 below, and in accordance with the key principles in paragraph 3 below. The Property Management Unit of the municipality is responsible for the administration of the Disposal Policy, and shall in this regard, in consultation with and with the assistance of 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 and other immovable capital assets as contained in the Supply Chain Management Policy. The final recommendation of the bid adjudication committee and the Municipal Manager will be submitted to Council for consideration.
- 1.3 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 eight 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:
  - 1.3.1 Electricity services
  - 1.3.2 Water services
  - 1.3.3 Sanitation services
  - 1.3.4 Refuse removal, refuse dumps and solid waste disposal services
  - 1.3.5 Municipal Health Services
  - 1.3.6 Municipal Roads
  - 1.3.7 Public Places
  - 1.3.8 Cemeteries

- 1.4 Section 14(2) of the MFMA authorizes the Council to decide on reasonable grounds during a council meeting that is open to the public, whether a capital asset is needed for the provision of the minimum level of basic municipal services or not so needed, and to consider the fair market value of the capital asset and the economic and community value to be received in exchange for a transfer of ownership of the capital asset. To enable Council to take an informed decision on the possible transfer of ownership of its land and buildings as provided for in section 14(2) of the MFMA, the Planning and Housing Development Unit must compile a List of all Municipal Land and Building which will contain at least the following information in respect of each piece of land and building:

Part A. Land and Buildings needed for Basic Municipal Services (not transferable)

Description	Zoning	Fair market & economic value

Part B. Land and Buildings not needed for Basic Municipal Services (transferable)

Description	Zoning	Fair market & economic value

- 1.5 The above list must be submitted to Council as soon as possible for consideration and approval. After approval of the list by Council in compliance with section 14(2) of the MFMA, the administration must ensue that:
- 1.5.1 the land and buildings contained in Part A of the List of Municipal Land and Building are maintained properly, and that ownership thereof are not transferred unless Council has once again conducted a section 14(2) enquiry;
  - 1.5.2 In the event of the transfer of ownership of land and building contain in Part B of the List of Municipal Land Buildings, the process is fair, equitable transparent, competitive and consistent with the MFMA and the municipality's SCM Policy.
- 1.6 The List of Municipal Land and Buildings must be maintained and regularly updated by the Planning and Housing Development Unit, and the

List must be submitted to Council on a quarterly basis for consideration and approval.

## 2. DEFINITIONS:

In this land disposal Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act, 2003 (Act No56 of 2003), has the meaning so assigned, and:

- a) “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;
- b) “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;
- c) “capital asset” means the non consumable movable and immovable property, including land, of the Municipality
- d) “Council” means the Municipal Council of the Dihlabeng Local Municipality (DLM), its legal successors in title and its delegates;
- e) “disposal” means a process of preparing, negotiating and concluding a written contract which involved the alienation of a capital asset, including a capital asset no longer needed by the Municipality or rights in respect thereof, by means of a sale or a donation, and “dispose” has a similar meaning;
- f) “HDI” means a Historically Disadvantaged Individual that is a South African citizen:
  - I. Who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983(Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) (“the interim Constitution”);and /or
  - II. Who is female; and /or
  - III. Who has a disability;
- g) “Housing Fund Land (HFL) means land which was acquired through State loans and finances.

- h) “MFMA” means the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003);
- i) “Municipality” means the Dihlabeng Local Municipality (DLM), and when referred to as
  - I. An entity, means a municipality as described in section 2 of the Systems Act;
  - II. A geographic area, means the municipal area determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No 27 of 1998);
- j) “Public improvement Fund Land” (PIFL) means land generally purchased with the municipality’s funds.
- k) “responsive bid” means a bid which conforms to all the terms, conditions and specifications contained in the bid documentation without material deviation or qualification;
- l) “SCM Policy” means the Supply Chain Management Policy;
- m) “SCM Unit” means the Supply Chain Management Unit which is under the management and control of the Chief Financial Officer, and that is responsible for the implementation and management of the SCM Policy;
- n) Upset price means the reserve price of the municipality.

### **3. RESPONSIBILITIES:**

- 3.1 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.
- 3.2 The municipality has a further responsibility in terms of acquiring, managing, developing and releasing its land, buildings and rights on behalf of its residents and ratepayers. 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 demands that, in all transactions that the municipality enters into, there should be maximum benefit to the municipality, its operational requirements and the broader community.

- 3.3 Certain interventions are regularly necessary in land transactions pursued by the municipality as compared to those of the private land property market. As the private market is solely concerned with maximizing capital gain, as against the role of the municipality in acting in the best interests of its citizens, it follows that the municipality will not singularly follow the processes and values of that market. Moreover, because the historic accumulation of land property is highly varied, this might need to be acknowledged in terms of future transactions.
- 3.4 Land and building 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 transaction and this must therefore be recognized and acknowledged.
- 3.5 A policy in respect of immovable property includes any right, interest or servitude therein or there over, and must therefore also take account of other legislation, policies and practices *enter alia* relating to land use, health, environment (both natural and built), and safety. The municipality, in subscribing to affirmative action principles, must therefore incorporate these principles within its real estate process to redress practices of the past.

#### **4. KEY PRINCIPLES**

- 4.1 The key principles of the Disposal Policy are to ensure that immovable capital assets owned by the municipality that are not needed to provide minimum level of basic municipal services, and that are surplus to the municipality's requirements, are sold to:
  - 4.1.1 Promote PDI participation in property market opportunities (property development, management, investment employment, commercial and residential);
  - 4.1.2 Build strong, integrated communities;
  - 4.1.3 Redress spatial inequalities;
  - 4.1.4 Promote access to services, amenities, transport and employment;
  - 4.1.5 Build a competitive advantage for HDI's in terms of market entry and participation (leveling the playing fields);

- 4.1.6 Encourage and foster broad based empowerment in terms of distribution of ownership, labour participation, capital, skills development, equity participation and end user benefit;
- 4.1.7 Focus on first time entry by HDI's into the property market with a view to enlarging the beneficiary pool;
- 4.1.8 Further the objectives of the municipality's integrated development plan;
- 4.1.9 Encourage flexibility and creativity in property transactions to address the changing needs and priorities of the municipality, and in particular the needs of the poor;
- 4.1.10 Promote access by HDI's to the social and economic benefits of property ownership, development and use;
- 4.1.11 Encourage the use of property as a catalyst for local and social development.

## **5. ACCOUNTS WITHIN WHICH LAND ASSETS ARE HELD**

- 5.1 Public improvement Fund Land (PIFL) refers to land general purchased with the municipality's funds. In the context of this Disposal Policy, it is a fixed asset, which is now not directly required for municipal purposes or programmes, although its release could act in support of such a programme.
- 5.2 Housing Fund Land (HFL) is land which was acquired through State loans and finances in support of past housing initiatives based upon previous apartheid policies of the then government. Accordingly then the Housing Development Acts (No 2,3 and 4 of 1987) previously prescribed how transactions would take place and gave little or no flexibility. It is recorded that this legislation was repealed by the Housing Act (No107 of 1997).

## **6. CATERGORIES OF MUNICIPALITY'S LAND ASSETS**

- 6.1 The Municipality's land assets are categorized as follows:
  - 6.1.1 Residential land;
  - 6.1.2 Commercial and Industrial land
  - 6.1.3 Social Sites (Workshop, Crèche and Institutional)
  - 6.1.4 Sport sites
  - 6.1.5 Agricultural Land

## **7. MANNER OF DISPOSAL OF THE MUNICIPALITY'S VARIOUS CATEGORIES OF LAND ASSETS**

### **7.1 Residential land incapable of development on its own**

- 7.1.1 Will be offered in ownership to the respective adjoining owner.
- 7.1.2 Will be priced at market value. The purchaser will be responsible for any and all costs associated with the possible relocation of services, rezoning, survey, registration and transfer.

### **7.2 Residential land capable development on its own (PIFL)**

- 7.2.1 Ownership will be offered by means of competitive bidding.
- 7.2.2 Will be subjected to an upset price that is market related.
- 7.2.3 Will, within certain pricing cohorts (as determined by the Municipality from time to time) be allocated to take account of persons who might have been previously disadvantaged. Bidding procedures will be utilized in such instances.
- 7.2.4 The creation of a free-standing lot will in each instance be the preference of the Municipality in order that new residential opportunities be created.

### **7.3 Residential land capable of development on its own (HFL)**

- 7.3.1 Ownership will be offered in terms of pricing and an allocation process by the Director/Manager: Housing.
- 7.3.2 Bulk land parcels will only be released for disposal if it is identified as available of disposal by the Director/Manager: Housing.

### **7.4 Residential land not immediately required for the Municipality's needs**

- 7.4.1 These are typical land parcels that have been acquired for a capital project, which has yet to commence. In such instances:
  - 7.4.1.1 The property will be offered on a short-term lease basis;
  - 7.4.1.2 The rental will be at a market rate, unless determined otherwise by the Director/Manager;

7.4.1.3 The property will be offered by private treaty.

**7.5 Commercial and industrial land incapable of development on its own**

7.5.1 Such land:

7.5.1.1 Will be offered in ownership to the respective adjoining owner;

7.5.1.2 Will be priced at market value;

7.5.1.3 The purchase will be responsible for any and all costs associated with the possible relocation of services, rezoning, survey, registration and transfer.

**7.6 Commercial and industrial land capable of development on its own**

7.6.1 Ownership will be offered by public competition.

7.6.2 The transaction will be subject to an upset price that is marketed related.

7.6.3 Might be subjected to conditions in support of certain desires or programmes of the Municipality.

7.7 In such instances:

7.7.1.1 The maximization of return will not necessarily be the determinant factor.

7.7.1.2 The desire of Municipality will be clearly articulated through a competitive bidding process.

7.7.1.1 Will be subjected to development clauses to ensure that the Municipality aims are achieved

7.7.1.2 Will within certain pricing cohorts (as determined by the Municipality from time to time) be allocated to take account of persons who might have been previous disadvantaged.

7.7.1.4 Might be offered in leasehold title to achieve certain desires or to overcome specific constrains, as might be the situation from a site and / or time specific point of view.

**7.8 Commercial and industrial land not immediately required for the Municipality's needs**

- 7.8.1 These are typically land parcels that have been acquired for a capital project, which has yet to commence.
- 7.8.2 The property will be offered on a short-term lease basis, and the notice period will vary based on when the property will be required.
- 7.8.3 The rental will be at a market rate, unless determined otherwise by the Council.
- 7.8.4 Ownership of the property will be offered by means of private treaty in the event that there is no demand for the site, or where it can be used by the adjoining property owner.
- 7.8.5 In the event of multi-tenanted premises, a fixed 3 to 5 years lease period will be offered in keeping with normal business practices. Lease of a fixed term will be offered by private treaty.

#### 7.9 **Social Sites from PIFL**

- 7.9.1 Ownership will be offered by means of competitive bidding.
- 7.9.2 Bidders will be subject to a screening process that will take account of inter alia the needs of the community, nature of the organization and ability to discharge intentions.
- 7.9.3 Will be subject to a predetermined priced that is marked related, or as may be determined by the Municipality.

#### 7.10 **Social Sites from HFL**

- 7.10.1 Ownership will be offered by means of competitive bidding.
- 7.10.2 Bidders will be subject to a screening process that will take into account of, inter alia, the needs of the community, nature of the organization and the ability to discharge intentions.
- 7.10.3 Will be subjected to a predetermined price is market related, or as may be determined Council, in instances where Municipality has discharged its obligations, by having already provided a minimum number of sites to service the reasonable needs of the community.
- 7.10.4 That it is determined on a formula based on cost price of the land, in instances where the minimum number of sites have yet to be provided.
- 7.10.5 Will be subject to development clauses to ensure discharge intentions.

## 7.11 Sport-Amateur Bodies

7.11.1 Amateur Bodies are those that are providing sporting opportunities of a nature as may be approved by Council from time to time. In this regard not all sport activity, notwithstanding its possible amateur status, is recognize that sporting bodies do provide a valuable service to the community in terms of recreation and development and assist the Municipality in the discharge of its responsibilities Accordingly;

7.11.1.1 Land will be offered in an open process;

7.11.1.2 Land will be offered on a leasehold title basis;

7.11.1.3 The lessee will be restricted to amateurs;

7.11.1.4 The lease will be subjected to development clauses to ensure the discharge of intentions;

7.11.1.5 Rental will be established on the basis of a nominal rental for the total land component of the lease as may be approved by the Municipality from time to time, together with 50% of the actual market value of the land occupied by any building development undertaken by the Body, such percentage being determined by Council from time to time;

7.11.1.6 The lessee will not be liable for rates, but will be responsible for the costs of services consumed;

7.11.1.7 The lease will be subject to condition to allow the Municipality, through its relevant Departments to utilize the grounds, subject to further terms and conditions as agreed by the Lessee and the Municipality;

7.11.1.8 The lease will preclude discrimination;

7.11.1.9 The lease will recognize that the Municipality has a limited responsibility in terms of providing for sporting and recreational opportunities;

7.11.1.10 The lease will ensure that the Municipality retains a minimum base of sport and recreational venues, which might vary from community as well as be constrained by operating and capital budgets;

7.11.1.11 Where existing facilities are being taken over, the lease will recognize the asset value of development already existing, whether this has been directly funded by Council or not

## 7.12 Sport-Professional Bodies

7.12.1 It is recognized that certain sporting bodies could move to full professional status over time, or might already be professional bodies when seeking a land development opportunity from the Municipality. In instances where there is financial benefit to be derived by an owner, owners or shareholders of a “club” a differentiation will be made from those agreements with amateur bodies in terms of rentals that would be payable.

7.12.2 Land rental will be at its full economic value or percentage thereof as may be specifically determined by Council, or alternatively a percentage of all financial turnover will be levied, such percentage being determined by the Municipality from time to time.

7.12.3 The contribution the organization makes to the town and townships and that sporting code, will be taken into account in considering the appropriate percentage. The organization will be responsible for rates.

### **7.13 Agricultural land capable of development on its own**

7.13.1 Ownership will be offered by public competition.

7.13.2 The transaction will be subject to an upset price that is marketed related.

7.13.3 Might be subjected to conditions in support of certain desires or programmes of the Municipality.

7.14 In such instances:

7.14.1 The maximization of return will not necessarily be the determinant factor.

7.14.2 The desire of the Municipality will be clearly articulated through a competitive bidding process.

7.14.1 Will be subjected to development clauses to ensure that the Municipality aims are achieved

7.14.2 Will within certain pricing cohorts (as determined by the Municipality from time to time) be allocated to take account of persons who might have been previous disadvantaged.

7.14.4 Might be offered in leasehold title to achieve certain desires or to overcome specific constrains, as might be the situation from a site and / or time specific point of view.

7.15 Agricultural land not immediately required for the Municipality’s needs

- 7.15.1 These are typically land parcels that have been acquired for a capital project, which has yet to commence.
- 7.15.2 The property will be offered on a short-term lease basis, and the notice period will vary based on when the property will be required.
- 7.15.3 The rental will be at a market rate, unless determined otherwise by the Municipality.
- 7.15.4 Ownership of the property will be offered by means of private treaty in the event that there is no demand for the site, or where it can be used by the adjoining property owner.
- 7.15.5 In the event of multi-tenanted premises, a fixed 3 to 5 years lease period will be offered in keeping with normal business practices. Lease of a fixed term will be offered by private treaty.

## **8. SELECTED TENDER**

- 8.1 In the event that property has a limited number of interested parties, or where the property has been designated into directly.
- 8.2 in the case where there is only one interested party in a property with a low value, a sale or lease can be entered into directly.
- 8.3 Use agreements are a further means where a party is able to occupy a site that has little or low value, no access and is a cost to Council in terms of maintenance and rates.

## **9. UNSOLICITED PROPOSAL**

- 9.1 It is important that the municipality is in position to entertain unsolicited proposals on its portfolio. Such proposal may inter alia include property development proposals, land sales and leases. In this regard the following principles will apply;
  - 9.1.1 Proposals received will be analyzed and evaluated by the municipality;
  - 9.1.2 Realistic propositions will be advertised in the media to elicit competitive proposals or objections from the public;
  - 9.1.3 Should the advertisement elicit a response from the market, then a competitive proposal call will be initiated by means of an invitation to bid;

9.1.4 The final lease or sale transaction will be submitted to the council for approval;

9.1.5 The prudent control will be by way of the market valuation certificate.

## **10. TRANSPARENCY AND PRUDENCE CONTROL**

10.1 The claimed empowerment benefits are applied entirely at the discretion of the municipality retains the right to approve or reject any claim.

10.2 As a local authority, it is important that all land transactions of the municipality involving real rights (sales, servitudes and leases) are conducted in a transparent manner with a high degree of prudence control. It is however advisable to balance the interests of transparency with commercial reality to ensure that entrepreneurial endeavor is not compromised and that the property industry is not discouraged from making unsolicited proposals on properties in the portfolio.

10.3 In this regard the following principles will apply

10.3.1 All transaction initiated by the public involving real rights to property, will be advertised in the apply;

10.3.2 Where property is offered by the municipality to the market, the following principles will apply;

10.3.2.1 Land use and bulk service contributions will be finalized by the municipality;

10.3.2.2 The offer to lease or purchase will be advertised in the media;

10.3.2.3 The proposal call of bid documentation will be made available both electronically and in hard copy for a fee;

10.3.2.4 The proposal call or bid will be either on a sealed bid basis or by dynamic pricing auction;

10.3.2.5 In the event that the property has a limited number of interested parties, or where the property has been designated for a specific use, a selected bid would be called for;

10.3.2.6 In the case where there is only one interested party in the property with a low value, a sale or lease can be concluded with that party;

## **11. PROTECTION OF PUBLIC INTEREST**

Local ward councilors will be notified of all significant transactions involving real on the portfolio situated in their wards at the earliest possible stage.

## **12. TRANSACTIONS WITH PROVINCIAL OR NATIONAL GOVERNMENTS**

Whenever the Provincial or National Government desired to obtain land owned by the municipality, ownership in such land shall be offered by treaty to the relevant organ of state at the full market value.