

# MUNICIPAL IMMOVABLE PROPERTY ACQUISITION AND DISPOSAL POLICY



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## **PREAMBLE**

The Municipality owns a sizable share of properties within its area of jurisdiction. Historically, property ownership in the Msunduzi Municipality's area of jurisdiction has been characterized by racial inequalities of past discriminatory laws resulting in spatial inequalities, tenure that is not secure, restricted access to land for the majority of the population and thus requires active intervention from Council to redress such inequalities in a constitutionally acceptable manner. Council has a responsibility to positively contribute its immovable property assets in a manner that ensures the greatest possible benefits to the strategic objectives of the Msunduzi Municipality, the goals of the City Development Strategy and the Spatial Development Plan and the community it serves.

The Council reviewed and approved the Supply Chain Management Policy in 2017. However, the framework regarding the acquisition and disposal of immovable property requires further refinement. This policy is implemented in terms of paragraph 40 of the Msunduzi Municipality: Supply Chain Management Policy, 2017. This Policy reflects the methodology and procedure for the purchase and disposal of various types of properties, inter alia but is not limited to; the disposal and acquisition for economic and residential opportunities in the Municipality for local investors, general development. This Municipality will in all immovable property acquisition and disposal, consider giving preference to local Investors and historically disadvantaged individuals.

This policy places emphasis and ensures that land acquisition and disposal within historically disadvantaged areas is undertaken in a conducive and sustainable manner. In cases where the municipality deems it necessary within these areas, may require deviation from standard policy statements

## 1. DEFINITIONS

For the purposes of this policy, the following words shall have the meaning ascribed hereunder unless the context indicates otherwise or it is otherwise expressly provided.

- 1.1. **“Accounting Officer”** means the City Manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and being the Head of Administration and Accounting Officer in terms of section 60 of the Local Government: Municipal Finance Management Act 2003 (Act No. 56 of 2003).
- 1.2. **“acquisition”** means to obtain ownership of or rights to immovable property in the name of the Municipality through purchase, donation, expropriation and auction.
- 1.3. **“asset”** means a resource controlled by a Municipality as a result of past events from which future economic benefits or service potential are expected to flow to the Municipality.
- 1.4. **“Asset Transfer Regulations”** means the Municipal Asset Transfer Regulations, 2008 made in terms of the MFMA and published under GN R878 in GG 31346 of 22 August 2008.
- 1.5. **“alienation”** means the disposal of Municipal-owned immovable property by means of sale, land availability agreement, exchange, donation or any other form of agreement which alienates any right in immovable property owned by the Municipality.
- 1.6. **“basic municipal service”** means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health, safety or the environment.
- 1.7. **“BBBEE”** means the Broad Based Black Economic Empowerment Act, 53 of 2003.
- 1.8. **“black people”** is a generic term which means Africans, Coloureds and Indians, as referred to in the BBBEE Act, and includes the DTI definition contained in the DTI Codes of good practice.
- 1.9. **“capital asset”** means any immovable asset such as land, property or building, or, 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.
- 1.10. **“Chief Financial Officer”** means the person appointed as the Chief Financial Officer of the Municipality, or his or her nominee.
- 1.11. **“competitive bidding process”** means a call for alternative proposals, a closed tender, a public tender or a public auction.
- 1.12. **“contract”** means a deed of alienation under which land is sold against payment by the purchaser to, or to any person on behalf of, the seller.
- 1.13. **“cost”** means the amount of cash or cash equivalent paid or the fair value of the other consideration given to acquire an asset at the time of its acquisition or construction or where applicable, the

amount attributed to that asset when initially recognized in accordance with the specific requirements of GRAP.

- 1.14. **“Council”** means the Council of the Msunduzi Municipality as envisaged in chapter 3 of the Municipal Structures Act (Act no. 117 of 1998).
- 1.15. **“development”** means the construction of a structure in terms of the National Building Regulations Act, 1977 as amended, after development plans are approved by the Municipality.
- 1.16. **“disposal”** notwithstanding the meaning thereof in the Municipal Asset Transfer Regulations, means:
  - (a) The demolition, dismantling or destruction of the immovable property; or
  - (b) Any other process applied to immovable property which results in loss of ownership of the immovable property otherwise than by way of transfer of ownership.
- 1.17. **“donation”** means the alienation or acquisition of immovable property at no consideration by the donor to the donee
- 1.18. **“Edendale Land Acquisition programme”** means Private land that is acquired in Edendale by the Municipality for redevelopment and redress along with associated land legal matters
- 1.19. **“enterprise”** means a person or persons conducting a business, trade or profession in the Republic of South Africa.
- 1.20. **“erf”** means land in a township, village, settlement or in an approved township registered in a deeds registry as an erf, lot, plot or stand or as a portion of the farm or remainder of any erf, lot, plot or stand or land indicated as such on a diagram or general plan of an approved township.
- 1.21. **“exchange”** means the simultaneous acquisition and disposal of immovable property or any right in respect 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.
- 1.22. **“EXCO”** means the Executive Committee
- 1.23. **“CSD”** means the City Development Strategy of the Municipality.
- 1.24. **“Financial Year”** means the period starting from 1 July in any year and ending on 30 June of the following year.
- 1.25. **“GRAP”** means Generally Recognized Accounting Practice.
- 1.26. **“GEVDI”** means the Greater Edendale and Vulindlela Development Initiative
- 1.27. **“immovable property”** means any piece of land including a real right in land (mineral rights etc.) registered as a separate unit at the Deeds Office and shall include an erf, a site and a farm portion, and everything that is permanently attached or erected thereon.

- 1.28. **“joint venture”** means a venture which is formed *ad-hoc*, for a specific project, in which two or more parties share the obligations, risks and rewards.
- 1.29. **“land”** an area of ground, especially of a particular type or used for a particular purpose.
- 1.30. **“lease”** means an agreement by which the owner of property allows another to use it for a specified time in return for a specified amount of money.
- 1.31. **“long-term”** means a period-longer than 3 years.
- 1.32. **“MADC”** means the *Municipal Asset Disposal Committee*
- 1.33. **“Market related value”** means the estimated amount for which a property would exchange (lease / sale / purchase) on the date of valuation as determined by the Council’s Valuer (a Valuer must be registered in terms of the relevant legislation) between a willing buyer and willing seller in an arm’s length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion.
- 1.34. **“MATR”** means the Municipal Asset Transfer Regulations promulgated in terms of the MFMA and published in Government Gazette No. 31346 of 22 August 2008.
- 1.35. **“MFMA”** means the Local Government: Municipal Finance Management Act, (Act no. 56 of 2003).
- 1.36. **“Municipality”** means when referred to as:
- (a) An entity, the Msunduzi Municipality as a Municipality described in Section 2 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), including a duly authorized official of the Municipality; and
  - (b) A geographical area, the area of jurisdiction of the Municipality as determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998).
- 1.37. **“open / public bid”** means the open process of calling for bids on the alienation of specified immovable property from the public or unspecified person(s).
- 1.38. **“organ of state”** means an organ of state as defined in the MATR.
- 1.39. **“public auction”** means the open process of alienating property at a specified date, time and place to the highest bidder from the public.
- 1.40. **“Public Private Partnerships”** means a Public Private Agreement between the Municipality and a Private Partner as prescribed in section 120 of the MFMA.
- 1.41. **“PPFA”** means the Preferential Procurement Policy Framework Act, No 5 of 2000.
- 1.42. **“road reserve”** a portion of land reserved for Municipal services and pedestrian traffic.
- 1.43. **“SD&CE”** means Sustainable Development and City Enterprises
- 1.44. **“SDF”** means the Spatial Development Framework of the Municipality.
- 1.45. **“SMC”** means the Strategic Management Committee

- 1.46. **“Supply Chain Management Policy”** means the Supply Chain Management Policy of the Municipality as contemplated in chapter 11 of the MFMA and the Supply Chain Management Regulations (GNR 868 of May 2055).
- 1.47. **“Systems Act”** means the Local Government: Municipal Systems Act, 32 of 2000.
- 1.48. **“transfer”** means in relation to a capital or subsidiary asset, the transfer of ownership in the asset as a result of a sale or other transaction.

## **2. PURPOSE**

The purpose of this policy is to provide a framework for the acquisition of land required for municipal purposes, and the management and disposal of municipal land that is not needed to provide the minimum level of basic municipal services, in a manner that primarily promotes Broad Based Black Economic Empowerment, through property ownership, development and uses, as well as, first time entry into the property market by previously disadvantaged individuals (PDI's). This policy aims to be responsive to the Municipality's strategic objectives, the City Development Strategy and Spatial Development Plan goals, and further make a positive contribution to the municipal economic growth and sustainable utilization of all land within the municipal jurisdiction.

## **3. OBJECTIVES**

The objectives of Policy are to:

- 3.1. Provide a framework for the acquisition, management, use and disposal of Municipality's immovable property in compliance with the Supply Chain Management (SCM) Policy and in a manner that supports the strategic interventions of the national and provincial spheres of government and the strategic objectives of the Msunduzi Municipality as contained and expressed in the Community Development Strategy and Spatial Development Framework thereby ensuring the realization of the needs and aspirations of the community;
- 3.2. Promote economic transformation;
- 3.3. Achieve a substantial change in the racial composition of property ownership;
- 3.4. Promote Broad-based Black Economic Empowerment (BBBEE);
- 3.5. Promote investment and development;
- 3.6. Promote sustainable human settlements;
- 3.7. Give effect to the Supply Chain Management Policy of Council;
- 3.8. Promote spatial integration of the Msunduzi Municipality;
- 3.9. Promote social transformation and integration;
- 3.10. To promote transparency, uniformity, consistency and encourage public participation in the disposal of immovable property process;



- 3.11. To ensure that assets are not disposed when the disposal of the asset or the terms of disposal could disadvantage the Municipality or the community, financially or otherwise; and
- 3.12. To ensure that all disposals are, in terms of section 14 of the MFMA, fair, equitable, transparent, competitive and consistent with the Municipality's SCM Policy.

#### **4. APPLICATION**

- 4.1. This Policy, must be applied to all municipal purchased and owned properties.
- 4.2. The Accounting Officer must establish an Acquisition and Disposal Committee to facilitate the disposal of any municipal land in accordance with the provisions of section 14 of the MFMA.
- 4.3. The PPPFA shall also be used as a framework guiding the Acquisition and Disposal Committee by using the preferential point system for the sale or letting of municipal land.

#### **5. LEGISLATIVE FRAMEWORK**

The Msunduzi Municipality shall, in implementing this policy, comply with the legislative framework referred to hereunder:

- 5.1 Constitution of the Republic of South Africa Act, 108 of 1996;
- 5.2 Broad-Based Black Economic Empowerment Act, 53 of 2013;
- 5.3 Local Government: Municipal Finance Management Act, 56 of 2003;
- 5.4 Supply Chain and Asset Transfer Regulations;
- 5.5 Supply Chain Management Policy;
- 5.6 Prevention and Combating of Corrupt Activities, Act 12 of 2004;
- 5.7 Local Government: Municipal Systems Act, 32 of 2000 and Regulations;
- 5.8 Local Government: Municipal Structures Act, 117 of 1998;
- 5.9 KwaZulu-Natal Planning and Development Act, 6 of 2008;
- 5.10 Spatial Planning and Land Use Management Act, 16 of 2013 and SPLUMA Bylaws;
- 5.11 National Development Plan;
- 5.12 Treasury guidelines as issued by the Minister of Finance in terms of the Municipal Finance Management Act, 2003;
- 5.13 Competition Act, 89 of 1998;
- 5.14 Alienation of Land Act, 68 of 1981 as amended;
- 5.15 Government Immovable Asset Management Act, 19 of 2007;
- 5.16 State Land Disposal Act, 48 of 1961;
- 5.17 Local Authorities Ordinance 25 of 1974;
- 5.18 Municipal Property Rates Act, 6 of 2004; and
- 5.19 Registries Act, 47 of 1937.
- 5.20 Msunduzi Municipality Immovable Property Market Valuation and Policy as well as the Guidelines.

## **6. GENERAL PRINCIPLES**

The sole discretion to acquire and dispose of any immovable property rests with Council and will be based on the following principles:

- 6.1 The use of Municipality immovable property to promote social integration, creation of sustainable human settlements, to redress existing spatial inequalities, to build strong integrated and dignified communities and to promote access to land, housing, services, amenities, transport and opportunities for employment.
- 6.2 The promotion of transformation through access by BBBEE compliant enterprises and black people to the social and economic benefits of immovable property ownership, management, development and use.
- 6.3 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.
- 6.4 The promotion of development in the within the framework and in support of the deliverables as outlined in the Spatial Development Framework and detailed in the Local Area Plans.
- 6.5 To support the implementation of government's applicable policies on housing, including, but not limited to, densification, infill and public service infrastructure as amended from time to time.
- 6.6 To ensure that the adjudication system does not only place emphasis on the price but encompasses other factors that give effect to the overall objectives of the BBBEE Act.
- 6.7 To determine a percentage which will be regarded as an allowable premium to be borne by Council as its contribution towards the transformation of the property sector in Msunduzi.

## **7. KEY PRINCIPLES UNDERPINNING LAND POLICY**

The Municipality reserves the right to decide in its sole discretion to acquire, and to dispose Municipal owned property and its decision in this regard is final. A set of principles and values, which underpin land acquisition and disposal, is critical in guiding the process of policy formulation as well as its application.

The land acquisition and disposal policy aims to:-

- 7.1. Redress past land ownership patterns to reflect the population demographics of the District;
- 7.2. Ensure an equitable, flexible and transparent policy which enables the efficient performance of appropriate land transactions to serve the diverse needs of the Municipality's business units and communities;
- 7.3. Act in support of:-
  - a. Development of land, the local economy, provision of infrastructure and/or housing;
  - b. Land use - Town planning scheme/ land information system;
  - c. The interest of the public and plight of the poor.
  - d. Rates systems.
  - e. Local Agenda 21 principles of sustainable development and environmental preservation.

7.4. Stimulate Economic Development. To fulfil this aim, the policy should:-

- a. Be equitable.
- b. Be flexible (always in a process of development).
- c. Enable efficient transactions to reduce bureaucracy.
- d. Ensure appropriate land transactions.
- e. Serve the needs of the Municipality's departments and communities.
- f. Ensure compliance with all environmental legislation.

## **8. PROBLEM STATEMENT**

- 8.1. The evolving land acquisition and disposal framework for this Municipality must be informed by the legal and constitutional context within which Municipalities are operating. This is critical since the Constitution is the supreme law of the land.
- 8.2. The Municipality has a core responsibility to acquire and avail land and buildings, in the first instance, for use by its business units for purposes of developing and maintaining Municipal infrastructure, promoting service delivery and for facilitating social and economic development, spatial integration and environmental sustainability. Immovable assets not required for these purposes are by implication surplus to Municipal needs although future requirements of the Municipality must be acknowledged and hence the need to hold property in reserve.
- 8.3. The Municipality has a responsibility to acquire, manage, develop and release its real estate holdings and rights on behalf of its residents and ratepayers. The key consideration is that the best interests of the Municipality (and thus their residents) should be paramount in all real estate transactions that the Municipality enters into. This demands that in all transactions the Municipality enters into, there should be maximum benefit to it, its operational requirements and the broader community.
- 8.4. Certain interventions are regularly necessary in land transactions pursued by the Municipality as compared to those of the private property market. As the private market is solely concerned with maximising capital gain, as against the collective role of the Municipality in acting in the best interest of its citizens, it follows that the Municipality will not singularly follow the processes and values of that market.
- 8.5. Land and buildings affect the Municipality's entire organisation and straddles all units and committees of the Municipality. Therefore, this Policy must act in support of principles and values such as economic development, social, economic and environmental sustainability, land use, housing, social and community infrastructure, physical infrastructure, biodiversity protection, culture and recreation.
- 8.6. Market forces will always be the point of departure in any land or property transaction and this must therefore be recognised and acknowledged.
- 8.7. A policy in respect of immovable property includes any right, interest or servitude therein or there over and must also take account of other legislation, policies and practices relating to land use, health, environment (both natural and built) and safety etc.

8.8. The Municipality in subscribing to affirmative action principles, must incorporate these principles in its' Municipal Land Acquisition and Disposal Policy, to redress practices in the past practices

## **9. MUNICIPAL DISPOSAL PROCEDURE**

9.1. The municipality is guided by provisions of the MFMA and MATR in its procedure for property disposal. The procedure must be administered in a manner that Council makes an informed decision in terms of Section 14(2) -(5) of the MFMA. The municipality has set out the following procedure towards the disposal of properties.

- 9.1.1. The service department responsible for the disposing off properties must circulate for comments; information on the property it intends to dispose; to all the relevant internal departments to determine whether or not the property is planned for basic service delivery;
- 9.1.2. The relevant departments must respond within 14 days of receipt of the request to comment;
- 9.1.3. All comments received from the relevant departments must be submitted to the Legal Services unit for comments to which the Legal Services unit must respond within 15 days of receipt of request to comment;
- 9.1.4. A report of recommendation for the disposal of properties that will not be required for basic service delivery must be prepare and submitted to the relevant municipal committees i.e. MADDC, SMC, SD&CE Portfolio and EXCO for recommendations;
- 9.1.5. Upon Councils approval for disposal, the service department may commence with the supply chain procedure as prescribed in the Supply Chain Management Policy.

## **10. CATEGORIES OF PROPERTIES**

The Msunduzi will dispose of its immovable property by utilizing the various types of disposal methods in respect of the different categories of properties as listed hereunder. In the event that a particular property type has not been categorized hereunder, the Disposal Committee will make a decision on which method of disposal is to be used in respect of that property.

### **10.1. Properties not for Disposal**

- 10.1.1 Properties that are in terms of section 14 of the MFMA required by the Council to render a minimum level of basic municipal services may not be disposed
- 10.1.2 Vacant properties utilized for parks, open spaces, road reserve and similar municipal purposes, except where the Council had resolved in terms of section 14 (2) of the MFMA that such vacant properties are not required to render the minimum level of basic municipal service.
- 10.1.3 Such other properties as the Council may in its sole discretion decide that it is required by the Council to render a minimum level of basic municipal services.

### **10.2. Strategic Properties**

- 10.2.1. These are properties on which development for investment and attraction purposes must occur; industrial development of more than a single land parcel and also include:

- a. Residential and business erven on which multiple residential and/or business units will be allowed in terms of the SDF and/or Town Planning Scheme;
- b. Properties that Council envisions economic investment and those that will act as catalyst for development in the area;
- c. Properties outside approved townships such as farm land and agricultural holdings; and
- d. Such other properties that the Council may in its sole discretion determine.

10.2.2. The method of sale for the disposal of the strategic sites is recommended to be undertaken in accordance to Section 25 of the Supply Chain Management Policy. The sale of these types of properties will be subject to individual identification of its development potential within the Council's Community Development Strategy and SDF and other Strategies.

- a. In the release of properties on which townships must still be developed, Council may impose conditions to ensure that specific erven are provided within such townships as may be required for the future needs of Council.
- b. These properties will be sold to bidders through a two-phase bidding process that would entail a prequalification of bidders before final adjudication is done.

### 10.3. **Non-Strategic Properties**

10.3.1 These are all properties that Council approves to dispose that are not listed under clause 10.2.

10.3.2 The normal disposal process may apply to the disposal of non-strategic sites. In instances where a bid for non-strategic property closes without any bid received, private treaty or out of hand sale received after the period of 30 days from the closing date of bids may be considered as an unsolicited bid. This consideration of private treaty or out of hand sale shall be valid for a period of 12 months from the date of the Council resolution approving the permanent disposal and transfer of the property concerned. If the disposal of the asset resorts to a private treaty / out of hand sale, then this must be subject to a public participation process prior to Council making its final decision on the disposal of the land by private treaty.

## 11. **METHOD OF SALE OF IMMOVABLE PROPERTY**

Disposal of the Msunduzi Municipality's non-strategic and strategic immovable property shall be executed primarily by means of competitive bidding process in compliance with the Supply Chain Management Policy. The Accounting Officer may however dispense with the official procurement processes in particular cases where circumstances as set out in regulation 36 of the Supply Chain Management Policy prevail, where it will be impractical to follow a competitive bidding process or where the application falls within the parameters of an unsolicited bid as defined in regulation 37 of the Supply Chain Management Policy. When disposing of property, the fair market value of the asset must be considered against the economic and community value to be received in exchange for the asset, unless public interest or the plight of the poor demands Preference when evaluating the bids will be granted

to historically disadvantaged individuals and enterprises who promote economic diversification through economic empowerment strategic imperatives of government.

#### **11.1. Public Auction**

- 11.1.1. Where Council deems it expedient, a public auction may be explored in order to dispose of properties.
- 11.1.2. Council may utilize the services of auctioneers for purposes of disposing of its properties. The costs thereof will be for the account of the successful purchaser and same shall be incorporated in a deed of sale between the Msunduzi Municipality and the successful purchaser.
- 11.1.3. All sales of immovable assets should be at current Market Value except when the public interest or the plight of the poor demands otherwise. All transactions are subject to the tendering and adjudication guidelines, contained in this policy.

#### **11.2. Exchange**

The process of exchange, where a disposal and an acquisition take place simultaneously, in which event the rules of both disposal and acquisition apply, and where an exchange of ownership of the respective immovable assets occur, provided that in the event that one immovable asset is of a higher monetary value than the other, a cash payment equivalent to the shortfall must be made by the party who has alienated the immovable asset that is of higher value.

#### **11.3. Donations**

- 11.3.1. The donation of a capital asset to other organs of State or to Community Based Organisations,
- 11.3.2. Non-governmental Organisations, Non-profit Organisations, and Civil Society Organisations, in furtherance of Socio-Economic and Environmental Objectives may be considered by the Council.

#### **11.4. Dispensing with the Competitive Bidding Process**

The municipality may choose to decide to deviate from normal procedures. Such deviations must be in line with Section 36 of the Supply Chain Policy.

#### **11.5. Unsolicited Bids**

- 11.5.1. The Municipality or Municipal entity not obliged to consider unsolicited bids received outside a normal bidding process, provided that if the Municipality decides to consider an unsolicited bid in terms of section 113 (2) of the MFMA, it may do so in accordance to Section 37 of the Supply Chain Management Policy only if: -
  - a. the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - b. the product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the Municipality or Municipal entity and;
  - c. the reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.

11.5.2. If a Municipality or Municipal entity decides to consider an unsolicited bid, it must ensure that Section 37(3)-(9) of the Supply Chain Management Policy is fully complied with.

**11.6. Disposal of Land to National, Provincial and or State Entities as Set Out in the Municipal Finance Management Act**

11.6.1. The Constitution of the Republic of South Africa Act 1996 (Chapter 3) promotes the spirit of cooperative governance and intergovernmental relations. It is, therefore, in pursuance of these principles that the Msunduzi Municipality will strive to assist and support the initiatives of the other spheres of government to secure the wellbeing of the people of the Republic. The foregoing is further endorsed by section 14(6) of the MFMA; in paragraphs 40(3) (i) and (ii) of the Supply Chain Management Policy of the Msunduzi Municipality and further transposed in Regulation 20 of the Municipal Asset Transfer Regulations.

11.6.2. Where it is established that the immovable asset is no longer to be used for the specified public interest or benefit of the citizens, as specified by the government department concerned, ownership of the immovable asset should revert to Msunduzi Municipality, free of charge.

11.6.3. This method of disposal will, of consequence, be exempt from the application of the competitive bidding process. The Msunduzi Municipality may on written request received from another organ of state and before transfer of the property permit the intended recipient of the asset to take immediate possession of the said asset on a date mutually agreed to between the parties in exchange for an indemnity in favour of the Msunduzi Municipality against any and all actions flowing from such possession pending transfer.

**11.7. Public Private Partnerships**

11.7.1. The Msunduzi Municipality may, subject to the provisions of section 120 of the MFMA, identify parcels of land for purposes of availing same for the advancement of any of its strategic objectives.

**11.8. Certificate for each disposal from the Chief Financial Officer.**

11.8.1. In terms of regulation (5) (2) of the MATR, if the combined value of any capital asset a Municipality intends to dispose of in any financial year exceeds five percent of the total value of its assets, as determined from its latest available audited annual financial statements, sub-regulation (1) (a) must be complied with in relation to all the capital assets proposed to be transferred or disposed of during that year’.

11.8.2. Sub-regulation 1 (a) requires the Accounting Officer to conduct a public participation process to facilitate the determinations a municipal Council must make in terms of S 14(2) (a) and (b) of the MFMA.

11.8.3. The Chief Financial Officer is therefore required to issue a certificate, for each disposal, that the threshold of 5% of the total value of all municipal capital assets has not been reached.

## **12. STANDARD CONDITIONS OF DISPOSAL**

### **12.1. Payment of purchase price and costs**

12.1.1. A bank guarantee of the purchase price shall be submitted to the Estates unit in the Finance Department within 30 (thirty) days of the date of signing the Deed of Sale, which shall be payable upon registration of transfer of the property.

### **12.2. Development requirements**

12.2.1. The purchaser shall commence with the development of the property within the agreed upon timeframes and according to relevant legislation.

12.2.2. Should the purchaser fail to commence with or complete the development as stipulated in clause 12.2.1 above, the provisions of the sale agreement will apply:

12.2.3. Should the property revert to the Municipality, the Municipality shall refund to the purchaser an amount equal to the amount paid by the purchaser in respect of the purchase price, less all costs attached to the retransfer of the property into the name of the Municipality and total rates incurred, which costs shall be for the account of the purchaser.

12.2.4. In order to comply with the requirements of the Deeds Office as set out in Circular No. 152 dated 1997.07.03 by the Registrar of Deeds, the above conditions imposed shall not be embodied in the Title Deed to be issued to the purchaser, but instead the following conditions shall be inserted in such deed: "*The property shall not be transferred without the written approval of the Msunduzi Municipality*".

### **12.3. Special conditions**

Such special condition as may be required in each individual case as may be dictated by the nature and status of the property being sold as well as the development parameters that the Council may determine.

## **13. AUTHORITY TO ACQUIRE**

13.1. The Municipality may acquire immovable property and rights in immovable property within or outside its municipal area by purchase, expropriation, exchange, donation, gift, lease, or any other type of agreement where the Municipality agrees to acquire any right to, or in immovable property subject to compliance with the procedures set out in this policy;

13.2. 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. This method of acquisition is to be used as a measure of last resort.

## **14. GENERAL PRINCIPLES**

14.1. 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:



- 14.1.1. Council priorities and initiatives;
  - 14.1.2. Corporate and service plans;
  - 14.1.3. Planning Policies; and
  - 14.1.4. Regional plans and area planning schemes.
- 14.2. The Municipality undertakes the acquisition (purchase or expropriation) of Immovable Property (land) and rights in Immovable Property (servitudes) for municipal purposes.
- 14.3. It is the responsibility of a Service Department to timeously, by a predetermined date as specified by the Property Management Section, advise the Property Management Section of the land or servitudes that are required in a particular financial year. The service department is required to furnish the Municipality 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 servitude is required.
- 14.4. 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.
- 14.5. The municipality will purchase the land or servitude at the market related value of the land or servitude as determined by a professional valuer or at such lesser amount as may be agreed between the parties.
- 14.6. 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.
- 14.7. 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.
- 14.8. The Municipality may conclude agreements that seek to rectify the usage of privately owned property by the Municipality for purposes which include but not limited to; the development of water reticulation pipes, municipal roads, and/or other similar public service infrastructure, where occupation of the said property occurred before adoption of this Policy and without concluding the necessary agreements with the affected land owner.
- 14.9. This Policy allows for the adoption of a guideline and governance framework on acquisition of immovable property, by the Municipality, that has been earmarked by GEVDI and required for the redevelopment of the area known as Greater Edendale and Vulindlela; provided that the guideline is not in contradiction to this policy.

## **15. ASSESSMENT**

- 15.1. Prior to arriving at a decision to acquire immovable property; the Accounting Officer is required to undertake a detailed assessment to ensure that:

- 15.1.1. The service delivery needs of the Municipality are best met by the proposed acquisition;
  - 15.1.2. That broader government objectives are also considered; and
  - 15.1.3. The expenditure of public funds is justified and are approved.
- 15.2. The Accounting Officer must ensure land acquisitions associated with infrastructure projects are consistent with (where relevant) Regional Plans, State Infrastructure Plans, Municipal Infrastructure Master Plans, SDF, 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.
- 15.3. In addition to the proposed acquisition being consistent with the objectives of planning documents, the Accounting Officer needs to consider other issues when undertaking the assessment, such as:
- 15.3.1. The reason why the preferred site or area best meets the Municipality's requirements;
  - 15.3.2. The Municipality's strategic land plan;
  - 15.3.3. Source of funding and value for money;
  - 15.3.4. Alternative service delivery options;
  - 15.3.5. Sharing of government resources e.g. co-location;
  - 15.3.6. Method of acquisition;
  - 15.3.7. Valuation of property;
  - 15.3.8. Consultation with stakeholders;
  - 15.3.9. Availability of surplus government property;
  - 15.3.10. Risks associated with proposed transaction; and
  - 15.3.11. Site constraints e.g. cultural and heritage issues and servitudes.

## **16. SITE SELECTION**

- 16.1. Evaluation criteria are to be developed to allow assessment of the site for suitability for the intended purpose.
- 16.2. Criteria may 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.
- 16.3. A report should be prepared by the Service Department outlining the reasons for selecting the site as this will form the basis of the consultation process.

## **17. VALUATIONS**

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

## **18. METHODS OF ACQUIRING IMMOVABLE PROPERTY**

The Municipality may acquire land, or rights to use in land in accordance to GRAP by: -

### **18.1 Open market (selection in a particular area/location of a suitable site)**

The Municipality usually acquires land through the open market place by either public auction or private sale.

### **18.2 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.

### **18.3 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 in the public interest or required for a public purpose by the municipality. This method of acquisition is to be used as a measure of last resort.

## **19. MANDATORY CONSULTATION**

19.1 Council shall not acquire land unless it has-

19.1.1 Advertised its intention to acquire such immovable property; and

19.1.2 Considered the objections (if any) lodged in accordance with the advertisement contemplated in subsection (19.1.1).

19.2 Any other land acquisition programme specific to the advancement of service delivery objectives of the Municipality through any government subsidy, grant or any other state funding mechanism may be exempted from the requirements of section 19.1 by way of approval from the Accounting Officer.

19.3 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:-

19.3.1 The description of the property, including the title description, street address if applicable and extent;

19.3.2 The contracting parties;

19.3.3 Reason(s) for proposed acquisition;

19.3.4 The purchase price or lease amount of the property;

19.3.5 Market value of property;

19.3.6 How the acquisition is to be financed;

19.3.7 Whether the transaction is reflected in the current budget; and

19.3.8 Whether other alternatives have been considered.

- 19.4 If it is reasonable and justifiable in the circumstances, the Accounting Officer may depart from the above requirements. In determining whether such departure is reasonable and justifiable, the Accounting Officer must take into account all relevant factors, including-
- 19.4.1 The objects of the proposed transactions;
  - 19.4.2 The nature and purpose of, and the need to take the decision;
  - 19.4.3 The likely affect of the action;
  - 19.4.4 The urgency of taking the action or the urgency of the matter; and
  - 19.4.5 The need to promote an efficient administration and good governance.

## **20. APPROVAL PROCESS**

- 20.1 Following the advertisement contemplated above, where applicable, the Municipality 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.
- 20.2 The report must be considered by the committee which has the delegated authority to consider such application.

## **21. MONITORING, EVALUATING AND REVIEW**

- 21.1 The Msunduzi Municipality will in concurrence with the Finance department be the custodian of the section of the Supply Chain Management Policy relating to property bids and shall monitor compliance with the framework and guidelines.
- 21.2 The Msunduzi Municipality may in its discretion review the impact of this policy on its inhabitants and effect amendments where necessary.

## **22. STANDARD CONDITIONS: ACQUISITION OF IMMOVABLE PROPERTY**

- 22.1 Payment of purchase price and registration costs
- 22.1.1 Where the Municipality has entered into an agreement in terms of which the Municipality acquires immovable property or any right to immovable property, the Municipality acknowledges the responsibility for payment off all costs incidental to registration of the acquisition in the relevant Deeds Registries Office.
  - 22.1.2 The Municipality further acknowledges that conveyancing practice demands security of the purchase price prior to registration of the property sold into the name of the Municipality.
  - 22.1.3 The purchase price may be secured either by way of a bank guarantee or cash transfer to the conveyancer's trust account once deed of sale has been concluded and property valuation is finalized.
  - 22.1.4 It shall therefore be the responsibility of the Accounting Officer to ensure that the said transaction(s) are adequately recorded in line with acceptable accounting principles and

sufficiently recorded once the immovable property or right in immovable property has been registered into the name of the Municipality.

**23. DISPOSAL OF RIGHTS IN IMMOVABLE ASSETS**

A servitude can be defined as a right which one person/ property has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable asset. Servitudes result in a burden on the immovable asset for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset. If the proposed servitude will result in the immovable asset being negatively affected, including the impairment of the ability to productively enjoy, utilize, permanently dispose or otherwise deal with the immovable asset, then such servitude must not be granted. Servitudes may be granted to any person (private or state organ) upon payment of appropriate determined market related value compensation by such person provided that where another organ of state requires a servitude for the benefit of the general public and subject to the necessary authority having been obtained, the payment to the granting of the servitude, may be waived. The party requiring the servitude, is responsible for all costs relating to the granting and registration of the servitude.

**24. ESTABLISHMENT OF THE ACQUISITION AND DISPOSAL COMMITTEE**

The Accounting Officer must establish and appoint members of the Municipal Asset Disposal Committee to oversee the implementation of the provisions of this policy, and make decisions in terms of this policy.

**25. COMMENCEMENT**

This policy shall commence and take effect on a date to be determined by Council.