

MSUNDUZI MUNICIPALITY



Policy Name:	Municipal Land Acquisition and Disposal Policy
Policy Number:	
Status:	Draft
Date:	
Approved By:	
Date Approved:	
Date Last Amended:	
Date for Next Review:	
Date Published on Intranet:	

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1. PREAMBLE:

- 1.1 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.
- 1.2 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.
- 1.3 This Land Acquisition and Disposal Policy of the Municipality reflects the methodology and procedure for the purchase, sale and letting of various types of properties in order to make available economic opportunities in the Municipality for local investors, this Municipality will in all land and acquisition disposal and letting matters, consider giving preference to local Investors.

2. PURPOSE

The purpose of this policy pertaining to the disposal of municipal land 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 this framework and guidelines are to:

- (a) Provide a framework for the acquisition, management, use and disposal of Council'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;
- (b) Promote economic transformation;
- (c) Achieve a substantial change in the racial composition of property ownership;
- (d) Promote Broad-based Black Economic Empowerment (BBBEE);
- (e) Promote investment and development;
- (f) Promote sustainable human settlements;
- (g) Give effect to the Supply Chain Management Policy of Council;
- (h) Promote spatial integration of the Msunduzi Municipality;
- (i) Promote social transformation and integration;
- (j) To promote transparency, uniformity, constancy and encourage public participation in the disposal of immovable property process;
- (k) 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
- (l) 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. REQUIREMENTS OF THE MUNICIPAL FINANCE MANAGEMENT ACT

Section 14

“(1) A Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provided the minimum level of basic municipal services.

(2) A Municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in sub-section (1), but only after the Municipal Council, in a meeting open to the public -

(a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and

(b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(3) A decision by a Municipal Council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that asset has been sold, transferred or otherwise disposed of.

(4) A Municipal Council may delegate to the Accounting Officer of the Municipality, its powers to make the determinations referred to in sub-sections 2(a) and (b) in respect of movable capital assets below a value determined by the Council.

(5) Any transfer of ownership of a capital asset in terms of sub-section (2) or (4) must be fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy which the Municipality must have and maintain in terms of Section 111.

(6) This section does not apply to the transfer of a capital asset to another Municipality or to a Municipal entity or to a National or Provincial organ of State in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with a prescribed framework.”

5. SUPPLY CHAIN MANAGEMENT POLICY

Black people, who are South African citizens, will be afforded a preference in terms of the Municipality's Supply Chain Management Policy, in respect of the disposal of viable immovable properties as embodied in Section 9 (2) of the Constitution of the Republic of South Africa (Act No. 108 of 1996).

6. APPLICATION

6.1 This Immovable Property Acquisition and Disposal Policy, must be applied to all municipal purchased and owned properties and must be complied with in every case where the disposal and letting of immovable assets is dealt with by the Municipality.

6.2 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.

6.3 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.

7. LEGISLATIVE FRAMEWORK

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

- (a) Constitution of the Republic of South Africa Act, 108 of 1996;
- (b) Preferential Procurement Policy Framework Act, 5 of 2000 and Regulations;
- (c) Broad-Based Black Economic Empowerment Act, 53 of 2013;
- (d) Local Government: Municipal Finance Management Act, 56 of 2003;
- (e) Supply Chain and Asset Transfer Regulations;
- (f) Supply Chain Management Policy;
- (g) Prevention and Combating of Corrupt Activities, Act 12 of 2004;
- (h) Local Government: Municipal Systems Act, 32 of 2000 and Regulations;
- (i) Local Government: Municipal Structures Act, 117 of 1998;
- (j) KwaZulu-Natal Planning and Development Act, 6 of 2008;
- (k) Spatial Planning and Land Use Management Act, 16 of 2013 and SPLUMA Bylaws;
- (l) National Development Plan;
- (m) Treasury guidelines as issued by the Minister of Finance in terms of the Municipal Finance Management Act, 2003;
- (n) Competition Act, 89 of 1998;
- (o) Alienation of Land Act, 68 of 1981 as amended;
- (p) Government Immovable Asset Management Act, 19 of 2007;
- (q) State Land Disposal Act, 48 of 1961;
- (r) Local Authorities Ordinance 25 of 1974;
- (s) Municipal Property Rates Act, 6 of 2004; and
- (t)
- (u) Registries Act, 47 of 1937.

8. 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.

- 8.1 **“Accounting Officer”** means the Municipal 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).
- 8.2 **“acquisition”** means to obtain ownership of or rights to immovable property in the name of the Municipality through purchase, donation, auction and lease.
- 8.3 **“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.
- 8.4 **“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.
- 8.5 **“alienation”** means the disposal of Municipal-owned immovable property by means of sale, land availability agreement, land swap, donation or lease.
- 8.6 **“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.
- 8.7 **“BBBEE”** means the Broad Based Black Economic Empowerment Act, 53 of 2003.
- 8.8 **“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.
- 8.9 **“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.

- 8.10 **“Chief Financial Officer”** means the person appointed as the Chief Financial Officer of the Municipality, or his or her nominee.
- 8.11 **“competitive bidding process”** means a call for alternative proposals, a closed tender, a public tender or a public auction.
- 8.12 **“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.
- 8.13 **“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.
- 8.14 **“Council”** means the Council of the Msunduzi Municipality as envisaged in chapter 3 of the Municipal Structures Act (Act no. 117 of 1998).
- 8.15 **“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.
- 8.16 **“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.
- 8.17 **“donation”** means the alienation or acquisition of immovable property at no cost.
- 8.18 **“enterprise”** means a person or persons conducting a business, trade or profession in the Republic of South Africa.
- 8.19 **“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.
- 8.20 **“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.

- 8.21 **“Fair market value”** in relation to immovable property, means the value at which a knowledgeable willing buyer and a knowledgeable willing seller would sell the immovable property in an arm’s length transaction.
- 8.22 **“Financial Year”** means the period starting from 1 July in any year and ending on 30 June of the following year.
- 8.23 **“Granting of Rights to Use, Control or Manage”** means where the granting of such rights do not amount to the transfer or permanent disposal of an asset, for example when a right is acquired through a leasing, letting or hiring out arrangement.
- 8.24 **“GRAP”** means Generally Recognized Accounting Practice.
- 8.25 **“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.
- 8.26 **“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.
- 8.27 **“land”** an area of ground, especially of a particular type or used for a particular purpose.
- 8.28 **“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.
- 8.29 **“long-term”** means a period of longer than 3 years.
- 8.30 **“market related value”** means the estimated amount for which a property should 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.
- 8.31 **“MATR”** means the Municipal Asset Transfer Regulations promulgated in terms of the MFMA and published in Government Gazette No. 31346 of 22 August 2008.
- 8.32 **“MFMA”** means the Local Government: Municipal Finance Management Act, (Act no. 56 of 2003).
- 8.33 **“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).

8.34 **“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).

8.35 **“organ of state”** means an organ of state as defined in the MATR.

8.36 **“public auction”** means the open process of alienating property at a specified date, time and place to the highest bidder from the public.

8.37 **“Public Private Partnerships”** means a Public Private Agreement between the Municipality and a Private Partner as prescribed in section 120 of the MFMA.

8.38 **“PPPFA”** means the Preferential Procurement Policy Framework Act, No 5 of 2000.

8.39 **“road reserve”** a portion of land reserved for Municipal services and pedestrian traffic.

8.40 **“SDF”** means the Spatial Development Framework of the Municipality.

8.41 **“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).

8.42 **“Systems Act”** means the Local Government: Municipal Systems Act, 32 of 2000.

8.43 **“transfer”** means in relation to a capital or subsidiary asset, means transfer of ownership in the asset as a result of a sale or other transaction.

9. GENERAL PRINCIPLES

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

- (a) The use of Council’s 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.

- (b) 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.
- (c) 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.
- (d) The promotion of development in Msunduzi within the framework and in support of the deliverables as outlined in the Spatial Development Framework and detailed in the Local Area Plans.
- (e) To support the implementation of government's applicable policies on housing, including, but not limited to, densification, infill etc. as amended from time to time.
- (f) 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.
- (g) 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.

10. KEY PRINCIPLES UNDERPINNING LAND POLICY

The Municipality reserves the right to decide in its sole discretion to acquire, and to dispose or let Council 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 should aim to:-

- (a) Redress past land ownership patterns to reflect the population demographics of the District.
- (b) 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.
- (c) Act in support of :-
 - (i) Development of land, the local economy, provision of infrastructure and/or housing;
 - (ii) Land use - Town planning scheme/ land information system;

- (iii) The interest of the public and plight of the poor.
 - (iv) Rates systems.
 - (v) Local Agenda 21 principles of sustainable development and environmental preservation.
- (d) Stimulate Economic Development. To fulfil this aim, the policy should:-
- (i) Be equitable.
 - (ii) Be flexible (always in a process of development).
 - (iii) Enable efficient transactions to reduce bureaucracy.
 - (iv) Ensure appropriate land transactions.
 - (v) Serve the needs of the Municipality's departments and communities.
 - (vi) Ensure compliance with all environmental legislation.

11. KEY VALUES AND ISSUES

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

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

12. PRINCIPLES

Following on from the values and issues as articulated above, it is possible to isolate the following principles as cardinal to the whole process of developing and applying new policy :-

- (a) Efficiency - reduce unnecessary bureaucratic red tape
 - timely decision-making
 - proper record systems
 - economies of scale
- (b) Effectiveness - quality of decisions
 - public benefit
 - cost-benefit analysis
 - decision risk
- (c) Sustainability - continuity
 - financial viability

- durability
- affordability

- (d) Democracy - consultation
 - participation
 - accountability
 - transparency
 - accessibility

- (e) Co-operation & Co-ordination - with municipal departments
 - inter-governmental
 - extra-governmental

- (f) Redress
 - levelling the playing field

- (g) Equity - fairness
 - justice
 - equality

- (h) Flexible and dynamic - less rigidity
 - adapting and changing with times

- (i) Developmental
 - internal
 - external

- (j) Informed - Identification of environmental impacts.
 - Identification of cumulative effects.
 - Provision of site specific data.

13. ALLOCATION OF PREFERENCE POINTS

13.1 In instances where assets are sold or leased by means of advertised competitive bids or written price quotations or by auctions the award must be made to the bidder scoring the highest preference points.

13.2 Preference point system

- (a) The 80/20 preference point system is applicable to bids with a rand value equal to, or above R50 000 and up to a rand value of R50 million (all applicable taxes included).
- (b) The 90/10 preference point system is applicable to bids with a rand value above R50 million (all applicable taxes included).

13.3 The PPPFA prescribes that the lowest acceptable bid will score 80 or 90 points for price. Bidders that quote higher prices will score lower points for price than the lowest priced Bidder on a *pro-rata* basis.

13.4 The formulae to be utilized in calculating points scored for price in terms of the 80/20 and 90/10 preference point systems (all applicable taxes included) is as follows:

$$Ps = \frac{80/90 (1 - Pt - Pmin)}{Pmin}$$

Pmin

Where

Ps = points scored for comparative price of bid or offer under consideration.

Pt = comparative price of bid or offer under consideration.

Pmin = comparative price of lowest acceptable bid or offer.

13.5 Points scored must be rounded off to the nearest 2 decimal places.

14. 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.

14.1 Properties not for Disposal

- (i) Properties that in terms of section 14 of the MFMA are required by the Council to render a minimum level of basic municipal services and will include but are not limited to:
 - a. Properties with buildings utilized for offices, depots, substations etc; and

- b. 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.
- (ii) 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.

14.2 **Strategic Properties**

- (i) These are properties on which more than a single dwelling unit or more than a single factory or a business complex can be developed and will 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 outside approved townships such as farm land and agricultural holdings; and
 - c. Such other properties that the Council may in its sole discretion determine.
- (ii) 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 the 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.

14.3 **Non-Strategic Properties**

- (i) These are properties that constitute individual erven in approved townships that were specifically created for sale to the public and will include Residential Erf / Church Erf / Crèche Erf/ Institutional Erf and, to the extent deemed appropriate by the Council, Industrial Erf / Business Erf / Commercial Erf on which only a single dwelling unit or a single factory/ business will be allowed in terms of the SDF or a Town Planning Scheme.
- (ii) These properties will be sold to the general public by way of a single phase tender process.

- (iii) In instances where a bid for non-strategic properties closes without any bid received, private treaty / 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 / 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.

15. METHOD OF SALE AND LEASE 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 and as further detailed in this framework and guidelines. 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 in terms of the methods mentioned hereunder, 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 otherwise.

15.1 Single Phase Bidding Process

- 15.1.1 This method will primarily be utilized for the sale of non-strategic properties. The main objective of this method is to support the housing initiative by affording individuals the opportunity to purchase and develop a residential property for their own occupation. Likewise industrial stands are intended for sale to a purchaser who wants to erect a factory building for its own use. The sale of these properties are therefore not intended for investment or speculation by selling and conditions will be imposed in the sale agreement to prevent the sale of these properties by the successful bidder before the intended dwelling or buildings are erected and for a specific time period.

- 15.1.2 For residential purposes only, preference will be given to natural persons who had never owned immovable property, either directly or indirectly, or who want to upgrade their property ownership and are financially able and otherwise qualify. This will apply solely to the disposal of single residential erven in areas and on sites considered to be suitable to meet this objective. The preference for first time home ownership will apply only once per beneficiary. Salary bands may in specific circumstances also play an instrumental role as an evaluation tool to ensure that individuals who fall within particular salary bands benefit from this mode of disposal.

15.2 Two Phase Bidding Process

- 15.2.1 This method will primarily be utilized for the sale of strategic properties. This method is an important mechanism for the alienation of immovable property to assist in the achievement of strategic objectives of the Council and involves the development of strategic immovable property in terms of a predetermined package of rights with the desired nature of the development defined in considerable detail. To give effect to this mode of disposal the Msunduzi Municipality shall on a continuous basis identify land to be utilised for land development objectives, priority development areas and / or local spatial development frameworks or a combination of all for alienation through a competitive bidding process which shall however give preference to Historically Disadvantaged Individuals, BBBEE compliant enterprises, Exempted Micro Enterprises, Qualifying small enterprises and joint venture partnering with BBBEE which promote the strategic objectives of the Msunduzi Municipality, CSD, SDF and other transformation instruments of the country and the purpose and objective of the BBBEE Act.
- 15.2.2 Preference when evaluating the bids will be granted to black people and enterprises who promote economic diversification through economic empowerment strategic imperatives of government.

15.3 Leases and Granting of Rights to use, Control or Manage Capital Assets

Decision-making process in granting of rights to use, control and manage municipal capital assets

- 15.3.1 A public participation process, in terms of clause 10.3.5 below must be authorized by the Council if the asset is over R10 million in capital value and a long-term right is proposed.

- 15.3.2 The request to Council for the authorization of a public participation process must include:
- a. The reasons for the granting of the long-term right,
 - b. Any expected benefits to the Municipality that may result from the granting of the right,
 - c. Any expected proceeds to be received by the Municipality from the granting of the right, and
 - d. Any expected loss or gain that will be realized or incurred by the Municipality arising from the granting of the right.

- 15.3.3 The Municipal Council may delegate its authority, that is, its approval power to the Accounting Officer in terms of leases, except where the capital asset is worth more than R 10 million and is a long-term lease which decisions can only be authorized by full Council.

Public participation process for granting long term rights to municipal capital assets with a value in excess of R 10 million

- 15.3.4 Where there has been a granting of a long-term right to use, control or manage a capital asset valued in excess of R 10 million, the Accounting Officer who has been empowered by the Municipal Council to conduct a public participation process is obliged, at least 60 days before a decision is considered, to do the following in terms of section 21A of the Systems Act:
- a. Publicize the proposal and the information statement referred to in regulation 34 (3)(b);
 - b. Invite comments or representations from the local Municipality and other interested persons; and
 - c. Enquire about the views and recommendations of the National Treasury and the relevant provincial treasury.

Consideration of proposals to grant rights to use, control or manage municipal capital assets.

- 15.3.5 The power to grant the right to use, control or manage a municipal capital asset vests in the municipal Council under regulation 34 (1)(b).

- 15.3.6 Regulation 36 requires the municipal Council, when considering whether to grant the right, to take cognizance of the following: -
- a. whether the Municipality may require the asset for its own use during the time that the right is to be granted;
 - b. where the right is to be granted to an organ of state or the private sector, whether any compensation received or the estimated value of enhancements to the asset will be of material financial gain to the Municipality;
 - c. the risks and rewards involved;
 - d. any comments or representations received from the local community and other interested persons;
 - e. any written views and recommendations from the National Treasury and the relevant Provincial Treasury; and
 - f. the Municipality's own strategic, legal and economic interests, as well as the interests of any affected organ of state and the local community, and ensuring that the applicable legislation/law has been adhered.
 - g. The Letting of immovable assets, should be at a market related rental except when the economic and/or community value or the plight of the poor demands otherwise. Section 14 (2)(b) requires the Municipal Council to have regard to a fair market value of assets which includes rentals. An Agreement of Lease, should be concluded, clearly describing all salient details i.e. the parties, immovable asset(s), rental payable, conditions, duration and breach of the Lease Agreement. A cession of a Lease does not fall within the requirements of Section 14 of the MFMA.

15.4 Sale by Pre-qualification

15.4.1 This method of alienation is specifically designed for the sale of vacant residential building sites to persons on a waiting list who comply with preset criteria for eligibility. Applicants will be requested to register on the Land Management Office database with preset qualification criteria. Only persons on the Land Management database will be requested to tender for vacant building sites when made available by Council.

15.4.2 The prequalification criteria may include the following:

- (a) must be a South African citizen;
- (b) residing within the borders of the Municipality's jurisdiction;

- (c) employed and proof of income is required;
- (d) registered on the Municipality's Land Management Office database;
- (e) previous applicant for land with positive feedback from municipal departments;
- (f) disabled;
- (g) never owned a property before;
- (h) never received a government housing subsidy property before;
- (i) lost property due to divorce;
- (j) previously disadvantaged person;
- (k) previous owners of residential properties which were repossessed by financial institutions; or
- (l) earning less than R 10 000 / R 10 000–R 15 000 / R 15 000–R 20 000 / R 20 000 and above per month.

15.5 **Public Auction**

- 15.5.1 Where Council deems it expedient, a public auction may be explored in order to dispose of properties.
- 15.5.2 Council may utilise 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.
- 15.5.3 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.

15.6 **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 whose asset is of lesser value.

15.7 **Donations**

The donation of a capital asset to other organs of State or to Community Based Organisations,

Non-governmental Organisations, Non-profit Organisations, and Civil Society Organisations, in furtherance of Socio-Economic and Environmental Objectives may be considered by the Council.

15.8 **Dispensing with the Competitive Bidding Process/ Unsolicited Bids**

- 15.8.1 A Supply Chain Management Policy must state that the Municipality or Municipal entity is in terms of Section 113 of the MFMA 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 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.
- 15.8.2 If a Municipality or Municipal entity decides to consider an unsolicited bid that complies with section 113 (2), the Municipality or Municipal entity must make its decision public in accordance with Section 21A of the Municipal Systems Act, together with: -
- a. its reasons as to why the bid should not be open to other competitors;
 - b. an explanation of the potential benefits for the Municipality or entity were it to accept the unsolicited bid; and
 - c. an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- 15.8.3 Once the Municipality or Municipal entity has received written comments, it must submit such comments, including any responses from the unsolicited bidder, to the National Treasury and the relevant Provincial Treasury for comment.
- 15.8.4 The Adjudication Committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.
- 15.8.5 A meeting of the Adjudication Committee to consider an unsolicited bid must be open to the public, and the said Committee must take into account: -

- a. any comments submitted by the public; and
- b. any written comments and recommendations of the National Treasury or the relevant Provincial Treasury.

15.8.6 If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations.

15.8.7 Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the Municipality or Municipal entity to the bid may be entered or signed within 30 days of the submission.

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

15.9.1 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 and further transposed in paragraphs 40(3) (i) and (ii) of the Supply Chain Management Policy of the Msunduzi Municipality.

15.9.2 Section 40 of the Supply Chain Management Policy in relation to the disposal of assets to other organs of state reads thus:

“ Council may (i) transfer an asset/property to another organ of state in terms of a provision of the Act enabling the transfer of assets/properties.

(ii) Transfer the asset to another organ of state at market related value or, when appropriate, free of charge.”

15.9.3 It will be Council’s policy to transfer an asset to another organ of state where such transfer is in the public interest and for the benefit of the citizens of the Republic and promotes the indivisibility of the Republic as enshrined in the Constitution.

- 15.9.4 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.
- 15.9.5 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.

15.10 Public Private Partnerships

- 15.10.1 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.

Housing for the poor

- 15.10.2 The Municipal Asset Transfer Regulations do not apply to housing on municipal land and the transfer of that municipal land for the poor to beneficiaries of such housing.

Certificate for each disposal from Chief Financial Officer.

- 15.10.3 In terms of regulation (5) (2) of the MATR, if the combined value of any capital assets 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’.
- 15.10.4 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.
- 15.10.5 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.

15.11 Special circumstances requiring sale by private treaty

The Municipality acknowledges that in certain special circumstances property can be sold or let by private treaty. These special circumstances apply to the following categories of properties:

- (a) Properties identified for sale or hire to CBO's, NGO's, NPO's and Public Benefit Organisations defined by the Income Tax Act and listed in schedule 9 of the Act;
- (b) Non-viable parcels of land may be let or sold to adjoining owners. The determination of non-viability rests with the Council and its decision will be final;
- (c) Viable properties in the case of business and industrial expansion and renovation, may be let or sold to the adjoining owners at market related prices;
- (d) Vacant industrial land;
- (e) Vacant land for the development of lower income housing in the categories of low cost, social and bank charter housing;
- (f) Municipal land for community projects;
- (g) Municipal property for educational purposes other than private schools;
- (h) Municipal property for disposal or letting to registered business cooperatives; and
- (i) The sale of Municipal owned property, subject to a long term registered lease, to ten years or longer, where the sale of the freehold rights is of greater benefit to Council than the present value of the income flowing from rental. This provision does not apply to Council owned property that is multi-tenanted. Such a sale must only take place after a proper cost benefit analysis has been undertaken. The analysis must include the following:
 - Current market value, mindful of the provisions of MATR 29;
 - Replacement cost;
 - Income streams / cash flow analysis;
 - Economic life expectancy;
 - BBBEE considerations;
 - Strategic importance;
 - Possible future use; and
 - Current lease clauses.
- (j) Airport land for aviation purposes; and
- (k) Previously disadvantaged areas identified by the Municipality, where the local economy is stagnant and remedial steps will require special treatment.

16. KEY PRINCIPLES AND GUIDELINES PERTAINING TO THE LETTING BY COUNCIL OF IMMOVABLE PROPERTY

- (a) Council is permitted to let immovable property in its ownership, on a long term or short term basis, by way of Private Treaty or Public Tender.
- (b) Where possible, Council's immovable property should be managed as a sustainable resource by leveraging environmental, social and economic returns on such immovable property while Council retains ownership thereof.
- (c) Council is permitted to let immovable property for development purposes aligned with its strategic objectives.
- (d) Unless otherwise provided for in this policy, vacant or improved immovable property shall be let at a fair Market related rental.
- (e) All applications to lease immovable property must be considered in accordance with this policy framework and other applicable legislation.
- (f) Unless otherwise provided herein, the letting of viable immovable property by Council, shall be affected by means of a process of public competition.
- (g) For the purpose of this policy, viable immovable property is deemed to be property that can be developed and function as a separate entity on its own and can be registered as separate entity by the Registrar of Deeds. Non-viable immovable property is property that owing to urban planning or physical constraints or extent, cannot be developed on its own or function as a separate entity and as such can only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owners property.
- (h) Black people, who are South African citizens, will be afforded preference in terms of the Municipality's Supply Chain Management Policy in respect of the letting of viable immovable properties as embodied in Section 9 (2) of the Constitution of the Republic of South Africa (Act No.108 of 1996).
- (i) In order to achieve the objective of broad based economic empowerment, Council reserves the right to limit the number of leases per tenderer in the course of a tender process.
- (j) Council reserves the right to entertain unsolicited bids for the lease of viable immovable property for development purposes, with the proviso that it abides by Council's Strategic Objectives and more specifically that it favours the promotion of Black Economic Empowerment, Entrepreneurship and Community upliftment. .
- (k) Non-viable immovable property may be let by Private Treaty to adjoining owners. Unless otherwise provided herein, such immovable property shall be let at a fair market related value, determined by a Professional Valuer. Leases for gardening purposes shall be at the tariff rental as approved by Council from time to time. No permanent structures shall be permitted on immovable property let for gardening purposes except a perimeter enclosure acceptable to Council.

- (l) Immovable property may be let by Private Treaty to social care users. Rentals shall be determined in terms of the tariff rentals as approved by Council from time to time and in such cases, the Lessee shall accept responsibility for the maintenance of the immovable property and any improvements thereon.
- (m) Viable immovable property may be let by Private Treaty in exceptional cases where the Council is of the opinion that Public competition would not serve a useful purpose or that it is in the interest of the Community and the Council. Council's reasons in each instance, must be recorded as part of its Resolution.
- (n) Sport facilities and other public amenities may be let by Private Treaty to Sports Boards, Sports Federations and other similar bodies in accordance with Council's Policies on sports facilities and public amenities. Community based bodies and non-professional sporting bodies shall be charged the tariff rentals as approved by Council from time to time. Professional sports bodies and bodies operating for profit shall be charged a fair market related rental based on the market value of the property to be leased.
- (o) Private Treaty letting of immovable property for outdoor seating to adjoining restaurant owners, is permitted subject to statutory requirements being complied with and a Professional Valuer determining the rental charged.
- (p) Lease Contracts with existing tenants of immovable properties may be renegotiated where Council is of the opinion that public competition would not serve a useful purpose or that renewal is aligned with Council's strategic objectives and in the interest of the Community, subject to such renewal being advertised calling for public comment as described in Item 12 of this policy. The existing tenant must give notice of the intention to renegotiate the lease at least six months before the date of termination.
- (q) Improvements to Council's immovable property established by the Lessee and which Council wishes to retain shall revert to Council, free of compensation, at expiration or termination of the Lease. Where such improvements are not required by the Council, these shall be removed by the Lessee to the satisfaction of Council and all costs shall be borne by the Lessee.
- (r) An owner of fixed immovable property who leases Council immovable property, may be substituted by a successor-in-title as deemed necessary on the same terms and conditions and / or additional terms and conditions.
- (s) No application shall be processed unless the prescribed application fee as per tariff has been paid nor shall any proposed lease be advertised unless the applicant has confirmed, in writing, that it will bear all costs involved in such transaction including, but not limited to, Legal, Survey, Re-zoning, Sub-division, Consolidations, Advertisement, Relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

17. KEY PRINCIPLES AND GUIDELINES PERTAINING TO THE DISPOSAL AND LETTING OF IMMOVABLE PROPERTY FOR SOCIAL CARE USES

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

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

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

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

17.4 No application shall be processed unless the prescribed application fee as per tariff, has been paid or be advertised unless the applicant has confirmed, in writing, that it will bear all costs where applicable, eg. legal, survey re-zoning, sub-division, consolidation, advertisements, relocation or provision of services, and / or a deposit as per prescribed tariff to cover incidental costs has been paid.

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

- (a) The size of the congregation / membership.

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

18. STANDARD CONDITIONS OF DISPOSAL

18.1 Payment of purchase price and costs

18.1.1 A 20% deposit shall be payable upon the date of signature of the proposed Deed of Sale, which deposit shall not be refundable should the purchaser decide not to proceed with the registration of the transfer for whatsoever reason, unless adverse soil conditions can be proven.

18.1.2 A bank guarantee for the outstanding balance 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.

18.1.3 All costs (advertising, rezoning, special consent, etc.) pertaining to the transaction shall be borne by the applicant/successful bidder. The applicant / successful bidder will deposit an amount equal to an estimate of the total cost to secure his obligations in this regard and undertake to pay any unforeseen excess costs. The Municipality will be liable to refund the balance of the unexpended costs, should the alienation not be finalized within a date agreed upon between parties referred to in the bidder document or deed of sale, or should the actual deposit be less than the expenditure occurred, the applicant/successful bidder shall pay the outstanding costs.

18.2 Development requirements

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

18.2.2 Should the purchaser fail to commence with or complete the development as stipulated in clause 11.2.1 above, the provisions of the sale agreement will apply.

18.2.3 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. The Municipality will only compensate the purchaser for any improvements erected on the property after the property has been resold to another purchaser and the purchase has been paid by said purchaser.

18.2.4 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".

18.3 **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.

18.4 **Bid advertisements**

18.4.1 Non-Strategic Properties

Bid adverts for non-strategic properties shall run for a period of 30 days from date of the invitation to a closing date. The same advert shall also invite any objections or claims in terms of the provision of section 79(18) of the Local Government Ordinance, 17 of 1939 as amended.

18.4.2 Strategic Properties

Bid adverts for strategic properties shall run for a period of 60 days from date of the invitation to a closing date. The same advert shall also invite any objections or claims in terms of the provision of section 79(18) of the Local Government Ordinance, 17 of 1939 as amended.

19. **AUTHORITY TO ACQUIRE**

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

- 19.2 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.

20. GENERAL PRINCIPLES

- 20.1 Council must ensure that decisions to acquire property (land, buildings and land improvements) are based on sound business and planning principles which are fully accountable and comply with:
- (a) Council priorities and initiatives;
 - (b) Corporate and service plans;
 - (c) Planning Policies; and
 - (d) Regional plans and area planning schemes.
- 20.2 The Property Management Section undertakes the acquisition (purchase or expropriation) of Immovable Property (land) and rights in Immovable Property (servitudes) for municipal purposes on behalf of all the service departments.
- 20.3 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 Property Management Section 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.
- 20.4 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.
- 20.5 The municipality will purchase the land or servitude at the market value of the land or servitude as determined by a professional valuer or at such lesser amount as may be agreed to by the seller. 16

- 20.6 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.
- 20.7 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.

21. ASSESSMENT

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

- (i) availability of surplus government property;
- (j) risks associated with proposed transaction; and
- (k) site constraints e.g. cultural and heritage issues and servitudes. 17

22. SITE SELECTION

- 22.1 Evaluation criteria are to be developed to allow assessment of the site for suitability for the intended purpose. Criteria could include requirements for public transport, potential to meet future service demand, local support services, physical site requirements, size of site in proportion to service delivery strategies, financial benefits, municipal priorities and other future service requirements in proximity to the site and potential to collate or share facilities and services. A report should be prepared by the Service Department outlining the reasons for selecting the site as this will form the basis of the mandatory consultation process.

23. VALUATIONS

- 23.1. Valuations are required in support of an acquisition decision and must be at current market valuation as determined by a qualified valuer(s).
- 23.2 Market value provides a consistent valuation base which is openly accountable and capable of being tested despite being essentially a matter of expert judgment. By using market value the real value and therefore the real cost of property assets, is taken into account during decision making processes.

24. METHODS OF ACQUIRING IMMOVABLE PROPERTY

The Municipality may acquire land by: -

24.1 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.

24.2 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.

24.3 Acquisition by expropriation

This method should not be used unless acquisition by agreement has been rejected as being unsuitable, or has been unsuccessful in gaining agreement and it can be shown that the property need is site specific and essential.

25. MANDATORY CONSULTATION

25.1 Council shall not acquire land unless it has-

- (a) advertised its intention to acquire such immovable property; and
- (b) considered the objections (if any) lodged in accordance with the advertisement contemplated in subsection (a).

25.2 When advertising its intention as contemplated above, all material information relevant to the proposed transaction must be included in the advertisement, including, but not limited to the following:-

- (a) the description of the property, including the title description, street address if applicable and extent; 18
- (b) the contracting parties;
- (c) reason(s) for proposed acquisition;
- (d) the purchase price or lease amount of the property;
- (e) market value of property;
- (f) how the acquisition is to be financed;
- (g) whether the transaction is reflected in the current budget; and
- (h) whether other alternatives have been considered.

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

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

26. APPROVAL PROCESS

- 26.1 Following the advertisement contemplated above, the Property Management Section 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.
- 26.2 The report must be considered by the committee which has the delegated authority to consider such application.

27. MONITORING, EVALUATING AND REVIEW

- 27.1 The Land Management Office 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.
- 27.2 The Msunduzi Municipality may in its discretion review the impact of the framework and guidelines on its inhabitants and effect amendments where necessary.

28. OFFICIALS AND POLITICAL OFFICE BEARERS

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

29. DISPOSAL OF RIGHTS IN IMMOVABLE ASSETS

A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable asset. Servitudes result in a burden on the immovable asset for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset. 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 market related compensation by such person provided that where another organ of state requires a servitude for the benefit of the general public and subject to the necessary authority having been obtained, the payment to the granting of the servitude, may be waived. The party requiring the servitude, is responsible for all costs relating to the granting and registration of the servitude.

30. ESTABLISHMENT OF THE ACQUISITION AND DISPOSAL COMMITTEE

The Accounting Officer must establish and appoint a committee to oversee the implementation of the provisions of this policy, and make decisions in terms of this policy.

31. COMMENCEMENT

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