

MSUNDUZI MUNICIPALITY

IMMOVABLE PROPERTY DISPOSAL POLICY FRAMEWORK

1. INTRODUCTION

The Disposal Policy of the Msunduzi Municipality, reflects the methodology and procedure for the sale and letting of various types of properties, and in order to make economic opportunities available in our City for local investors, this Municipality will in all Land Disposal and Letting matters, give preference to local Investors.

2. KEY PRINCIPLES UNDERPINNING LAND POLICY

2.1 The Msunduzi Municipality, in its sole discretion, reserves the right, within the confines of any applicable legislation, to dispose of or let Council owned property, within a set of principles and values to guide the process of policy formulation and its application.

2.2 The disposal policy must – :

- (a) Redress past land ownership patterns to reflect the population demographics of the City.
- (b) Ensure an equitable, flexible and transparent Policy which enables the efficient performance of appropriate land transactions to serve the diverse need of the Municipality's Business Units and Communities.
- (c) Act in support of :-
 - (i) The development of land, the local economy, the provision of infrastructure and housing;
 - (ii) Land use, the Town planning scheme and land information system;
 - (iii) The interest of the public and plight of the poor;
 - (iv) The rates systems; and
 - (v) Local Agenda 21 principles of sustainable development and environmental preservation; and
 - (vi) Transportation planning.
- (d) Stimulate Economic Development.
To fulfil this aim, the Policy must :-
 - (i) Be equitable;
 - (ii) Be flexible and 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; and
 - (vi) Ensure compliance with all Environmental Legislation.

3. KEY VALUES AND ISSUES

- (a) The evolving Disposal Framework for this Municipality must be informed by the legal and constitutional context within which Municipalities are operating, as the Constitution is the supreme law of the land.
- (b) The Municipality has a core responsibility to acquire and avail land and buildings, for –

- (i) Use by its Business Units for purposes of developing and maintaining Municipal infrastructure.
- (ii) For promoting service delivery; and
- (iii) For facilitating social and economic development, spatial integration and environmental sustainability,

and any immovable assets not required for these purposes are by implication surplus to Municipal needs although future requirements of the Municipality must be acknowledged, 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, with a key consideration being the best interests of the Municipality and its residents in all real estate transactions that the Municipality enters into, which demands that there must be maximum benefit to it, its operational requirements and the broader community in all transactions the Municipality enters into.
- (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, and 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, and 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 be recognised and acknowledged.
- (g) A Policy in respect of immovable property includes any right, interest or servitude therein or thereon, and must also take account of for example other legislation, policies and practices relating to land use, health, environment (both natural and built), and safety.
- (h) The Municipality, in subscribing to affirmative action principles, must incorporate these principles in its' Disposal Framework, to redress practices in the past.

4. 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 :-
 - (i) reduce unnecessary bureaucratic red tape;
 - (ii) timeous decision-making;
 - (iii) proper record systems; and
 - (iv) economies of scale;
- (b) Effectiveness :-
 - (i) quality of decisions;
 - (ii) public benefit;
 - (iii) cost-benefit analysis; and
 - (iv) decision risk;

- (c) Sustainability :-
 - (i) continuity;
 - (ii) financial viability;
 - (iii) durability; and
 - (iv) affordability;
- (d) Democracy :-
 - (i) consultation;
 - (ii) participation;
 - (iii) accountability;
 - (iv) transparency; and
 - (v) accessibility;
- (e) Co-operation and co-ordination :-
 - (i) with municipal departments;
 - (ii) inter-governmental; and
 - (iii) extra-governmental entities;
- (f) Redress by levelling the playing field;
- (g) Equity :-
 - (i) fairness;
 - (ii) justice; and
 - (iii) equality;
- (h) Flexible and dynamic :-
 - (i) less rigidity; and
 - (ii) adapting and changing with times;
- (i) Developmental :-
 - (i) internal; and
 - (ii) external; and
- (j) Informed :-
 - (i) identification of environmental impacts;
 - (ii) identification of cumulative effects; and
 - (iii) provision of site specific data.

5. **DEFINITIONS**

For the purpose of this policy document :-

“**Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

“**BEE**” means Black Economic Empowerment, which includes the economic empowerment of all black people including women, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to –

- (a) increasing the number of black people that manage, own and control enterprises and productive assets with particular reference to preferential population groups;
- (b) facilitating ownership and management of enterprises and productive assets by Communities, workers, co-operatives and other collective enterprises;
- (c) human resource and skills development;

- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investment in enterprises that are owned or managed by black people;

“BEE Enterprise” means an enterprise whose BEE score in terms of a sector scorecard, which has been issued as a code of practice or in terms of the DTI generic scorecard, is greater than or equal to 30% and has been verified by an accredited Verification Agency and is in line with the Small Business Development Act.

“BEE scorecard” means a scorecard for the measurement of BEE for a particular enterprise, as set out in the Charter;

“Biodiversity” means all aspects of biological diversity, especially species richness, ecosystem complexity and genetic variation;

“Black people” means Africans, Coloureds and Indians, as referred to in the Act, and the DTI definition contained in the DTI Codes of Good Practice;

“Business Co-operatives” means a co-operative trading company established through the Co-operative Development Unit of the Department of Trade and Industry and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981);

“Capital assets” includes immovable assets such as land, buildings and installations that cannot be moved without changing the identity thereof;

“Charter” means the Bank Housing Charter, which provides for affordable bondable housing subsidised by the Department of Housing and aimed at households falling in the R3 501,00 to R7 000,00 per month income category or as may be determined from time to time by the Department of Housing.

“Council” means the full Municipal Council;

“Disposal” means the sale, exchange, donation, or letting of Municipal land, including :-

- (a) the allocation of Municipal land free of charge, for a period of time;
- (b) the conclusion of any form of land availability agreement in respect of immovable property with any person; and
- (c) the registration of any real or personal right in respect of Municipal land, including servitudes;

“Enablement” means the preparation of land for development and includes :-

- (a) securing development rights;
- (b) rehabilitating land;
- (c) removing redundant structures or installations; and
- (d) installing infrastructure;

“Enterprise” means a person or persons conducting a business, trade or profession in the Republic of South Africa;

“Exchange” means the simultaneous acquisition and disposal of immovable property or any right in respect of immovable property in terms of an agreement between the Municipality and any other party or parties, where the compensation payable by the parties to each other, are offset and only the difference, if any, is payable to the appropriate party;

“Fronting” refers to any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various policy instruments, with fronting structures generally claiming a higher BEE status than the actual substantive benefits flowing to black beneficiaries;

“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;

“Local Area” means the area under the jurisdiction of the Msunduzi Municipality;

“Local Agenda 21” or **“LA 21”** means an action programme developed to assist Local Authorities to achieve sustainable development, drafted at the United Nations Earth Summit held in Rio de Janeiro in 1992, and ratified by the leaders of 179 countries whose principles are :-

- (a) a multi-sectoral approach,
- (b) the integration of social, economic and environmental issues,
- (c) concern for the future, equity, justice and accountability;
- (d) recognising and working within ecological limits;
- (e) developing partnerships with civil society; and
- (f) linking local issues with global impacts.

“MFMA” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

“Non-viable property” means immovable property that, owing to urban planning or physical constraints or extent, cannot be developed on its own or function as a separate entity and only becomes functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner’s property;

“Viable property” means immovable property that can be developed and functioned as a separate entity and can be separately registered in the office of the Registrar of Deeds;

“Priority Previously Disadvantaged Group” refers to African people as referred to in the Act and the DTI Codes of Good Practice;

“Public Private Partnerships” means a Public Private Agreement between the Municipality and a Private Partner as contemplated in Section 120 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“Real rights” means the right to traverse privately owned property with servitudes, which are notarially registered in the Deeds Office or contained in Title Deed Conditions;

“Social Housing” means a rental or co-operative housing option for low income persons, at a level of scale and built form which requires institutionalised management and which is provided by social housing institutions or other delivery agents in approved projects, and in designated restructuring zones, with the benefit of public funding as contemplated in this Act;

6. **REQUIREMENTS OF THE MUNICIPAL FINANCE MANAGEMENT ACT**

Section 14 of the MFMA provides as follows:-

“14. Disposal of capital assets

- (1) *A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.*
- (2) *A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the municipal council, in a meeting open to the public—*
 - (a) *has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and*
 - (b) *has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.*
- (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 power to make the determinations referred to in subsection (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 subsection (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.”*

7. **SUPPLY CHAIN MANAGEMENT POLICY**

- (1) Black people who are South African citizens, will be afforded a preference in terms of the Msunduzi 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, 1996.
- (2) The disposal of any and all capital assets must be dealt with in accordance with the provisions of the section 14 of the MFMA, and the Accounting Officer must establish a Disposal Committee to deal with the disposal of assets.
- (3) Adjudication of disposals will be conducted in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and the following formula will be applied until amended by subsequent Legislation:-
 - (a) The 80/20 or 90/10 preference point system for the sale and letting of assets, with the 80/20 formula applying to a value below R500 000,00 and the 90/10 formula to values above R500 000.00, as follows:

$$P_s = 80/90 \quad 1 + \frac{P_t - P_h}{P_h}$$

Where :-

Ps = Points scored from price of tender under consideration;

Pt = Rand value of tender under consideration; and

Ph = Rand value of highest acceptable tender.

- (4) Both the 80 and 90 points in the case of an open tender, can be further divided into points for functionality and price, provided that tender documents must contain a detailed breakdown of the points that will be awarded for various criteria.

8. APPLICATION

This Disposal Policy Framework, must be applied to all Municipal owned properties and must be complied with in every case where the disposal and letting of immovable assets is dealt with provided that all applications must be referred in the first instance, to the Disposal Committee established in terms of this Disposal Policy.

9. METHODS OF DISPOSAL AND LETTING

The disposal and letting of immovable property owned by the Msunduzi Municipality, must be conducted in accordance with one of the following methods :-

TENDER /PROPOSAL CALL

The sale or letting by tender or proposal call of all immovable assets, which must be at current market related value except when the public interest or the plight of the poor demands otherwise, provided that :-

- (i) all transactions are subject to the tendering and adjudication guidelines, contained in this policy;
- (ii) all sales of immovable assets must be on open tender, other than in exceptional circumstances as prescribed in this Policy; and
- (iii) immovable property may not be sold by auction unless the sale on the open market by other methods have not yielded a satisfactory result;

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;

LETTING

The letting of immovable assets, must be at a market related rental as contemplated in section 14(2)(b) except when the economic or community value or the plight of the poor demands otherwise, provided that :-

- (i) an Agreement of Lease must be concluded, clearly describing all salient details such as the parties, the immovable asset, rental payable, conditions, duration and breach of the Lease Agreement; and
- (ii) a cession of a Lease does not fall within the requirements of section 14 of the MFMA;

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; and

PUBLIC PRIVATE PARTNERSHIP

A Public Private Partnership, which in regard to the disposal of capital assets is a transaction between the Municipality and a private party, in compliance with Section 120 of the MFMA.

SALE BY PREQUALIFICATION

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 a waiting list with pre-set qualification criteria. Only persons on the waiting list will be requested to tender for vacant building sites when made available by Council.

10. TRANSFER BETWEEN SPHERES OF GOVERNMENT

- (1) Where the Municipality holds an immovable asset that is identified as essential for the furtherance of Socio-Economic objectives or owner occupation of spheres of government, transfer of such asset for this purpose must, as much as possible, take preference over any other proposed disposal for which that asset may be earmarked, and in terms of the requirements of the MFMA.
- (2) The transfer of immovable assets contemplated in sub-clause (1) will be subject to a clearly defined reversionary clause, providing for a reversion of ownership to the Municipality, free of charge, in the event that the immovable asset is no longer to be used for the specified socio-economic purpose or owner occupation by the government department concerned.

11 UNSOLICITED BIDS AND PRIVATE TREATY SALES

11.1 UNSOLICITED BIDS

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 :-

- (a) if the Municipality or Municipal entity decides to consider an unsolicited bid in terms of Section 113(2) of the MFMA, it may do so only if :-
 - (i) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (ii) the product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the Municipality or Municipal entity; and
 - (iii) the reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer;
- (b) if a Municipality or Municipal entity decides to consider an unsolicited bid that complies with subregulation (2), the Municipality or Municipal entity must make its decision public in accordance with Section 21A of the Municipal Systems Act, together with :-
 - (i) its reasons as to why the bid should not be open to other competitors;
 - (ii) an explanation of the potential benefits for the Municipality or entity were it to accept the unsolicited bid; and

- (iii) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice;
- (c) 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;
- (d) 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;
- (e) 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 :-
 - (i) any comments submitted by the Public; and
 - (ii) any written comments and recommendations of the National Treasury or the relevant Provincial Treasury;
- (f) 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;
- (a) 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.

11.2 PRIVATE TREATY SALES

The requirements contained in Section 11.1 above do not apply to unsolicited bids which are submitted in terms of special circumstances listed in (a) to (m) below.

The Municipality acknowledges that in certain special circumstances property can be sold or let by Private Treaty, which special circumstances apply to the following categories of properties:-

- (a) non-viable parcels of land may be let or sold to adjoining owners, provided that the determination of non-viability rests with the Council and its decision will be final;
- (b) viable properties in the case of business and industrial expansion and retention, may be let or sold to the adjoining owners at market related prices;
- (c) properties identified for sale and hire to Community Based Organisations, Non-governmental Organisations, Non-profit Organisations, Civil Society Organisations, and Public Benefit Organisations, defined by the Income Tax Act, No. 58 of 1962 and listed in schedule 9 of the Act;
- (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) the sale of municipal land, involving BEE in partnership with foreign investors;
- (g) municipal land for Community projects;
- (h) land for worship purposes (see Section 15 (5)(a) to (e));
- (i) municipal property for educational purposes other than private schools;
- (j) municipal property for sale and hire to registered business co-operatives established in terms of the Department of Economic Affairs, Environment and Tourism Initiative in KwaZulu-Natal;
- (k) the sale of Municipal owned property, subject to a long term registered lease, of ten years and longer, where the sale of the freehold rights is of greater benefit to Council than the

present value of the income flow 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 :-

- (i) Current market value.
 - (ii) Replacement cost.
 - (iii) Income streams / cash flow analysis.
 - (iv) Economic life expectancy.
 - (v) BBBEE considerations.
 - (vi) Strategic Importance.
 - (vii) Possible future use.
 - (viii) Current Lease Clauses.
- (l) airport land for aviation purposes; and
- (m) previously disadvantaged areas identified by the Municipality, where the local economy is stagnant and remedial steps require special treatment.

12. OFFICIALS AND POLITICAL OFFICE BEARERS

- (1) Officials in the employ of the Msunduzi Municipality have the right to make an offer for acquisition of immovable assets being disposed of by the Msunduzi Municipality.
- (2) A political office-bearer or an official in the employ of the Msunduzi Municipality who, in his or her personal capacity, has a direct or indirect interest in an immovable asset proposed for disposal, must declare such an interest, provided that the failure to do so will result in such sale or lease being cancelled forthwith and the employee or office bearer being held responsible for wasted costs.
- (3) An official in the employ of the Msunduzi Municipality may not act as a member of a panel responsible for assessing and adjudicating tenders relating to the proposed disposals if his or 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.

13. DISPOSAL OF RIGHTS IN IMMOVABLE ASSETS

- (a) A servitude is defined as a right which one person has over the immovable asset of another and includes instances in which the Msunduzi Municipality grants a party a right over a municipal owned immovable asset.
- (b) As servitudes result in a burden on the immovable asset for extensive periods of time, sometimes permanently, servitudes may only be granted after careful assessment of the impact of the proposed servitude on the immovable asset.
- (c) If the proposed servitude will result in the immovable asset being negatively affected, including the impairment of the ability to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude may not be granted.

- (d) Servitudes may be granted to any private person or organ of state, upon payment of the appropriate market related compensation, 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.
- (e) The party requiring the servitude, is responsible for all costs relating to the granting and registration of the servitude.

14. 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 must 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 must 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, must 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 and which can be registered as a separate entity by the Registrar of Deeds.
- (h) Non-viable immovable property is property that owing to urban planning or physical constraints, 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.
- (i) Black people, who are South African citizens, will be afforded preference in terms of the Msunduzi 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).
- (j) 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.
- (k) 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. (See provisions of this Policy relating to Unsolicited Bids – Section 11.)
- (l) Non-viable immovable property may be let by Private Treaty to adjoining owners, provided that unless otherwise provided herein, such immovable property must be let at a fair market related value, determined by a Professional Valuer.
- (m) Leases for gardening purposes must be at the tariff rental as approved by Council from time to time, provided that no permanent structures may be permitted on immovable property let for gardening purposes except a perimeter enclosure acceptable to Council.
- (n) Immovable property may be let by Private Treaty to social care users, provided that rentals must be determined in terms of the tariff rentals as approved by Council from time to time and in such

cases, the Lessee must accept responsibility for the maintenance of the immovable property and any improvements thereon.

- (o) 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, provided that Council's reasons in each instance must be recorded as part of its Resolution.
- (p) 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, provided that community based bodies and non-professional sporting bodies must be charged the tariff rentals as approved by Council from time to time, and professional sports bodies and bodies operating for profit must be charged a fair market related rental based on the market value of the property to be leased.
- (q) 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.
- (r) 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 11 of this Policy.
- (s) Improvements to Council's immovable property established by the Lessee and which Council wishes to retain will revert to Council, free of compensation, at expiration or termination of the Lease, provided that where such improvements are not required by the Council, these must be removed by the Lessee to the satisfaction of Council and all costs must be borne by the Lessee.
- (t) No application may be processed unless the prescribed application fee as per tariff has been paid, nor may 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.

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

- (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 Worships 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 or nominal prices;
 - (d) schools or centres utilised as homes for the mentally and physically disabled persons;
 - (e) non-profit rehabilitation centres;
 - (f) homes and centres for indigent, physically abused or destitute persons;
 - (g) organisations for the homeless and elderly including frail care facilities
 - (h) youth activity centres;
 - (i) facilities for the accommodation, care and burial of animals; and

- (j) Cemeteries, NPO funeral parlours and non-profit crematoria.
- (2) Organisations must be registered public benefit entities, listed in schedule 9 of the Income Tax Act.
- (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.
- (4) No application may 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, legal, survey re-zoning, sub-division, consolidation, advertisements, relocation or provision of services, or a deposit as per prescribed tariff to cover incidental costs has been paid.
- (5) The following factors are relevant in the selection and allocation of immovable property to places of worship:-
 - (a) the size of the congregation or its 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 or activities will be provided in addition to religious facilities; and
 - (e) whether or not the congregation and its membership is drawn from the area in which a site is being applied for.

16. PROVINCIAL NOTICE NO. 1369 OF 2006

The MEC of Local Government and Traditional Affairs published a Notice on 17 August 2006, in terms of which all Disposals of Properties must be referred to his office, for comment. The Notice is attached as Annexure A.

ANNEXURE A

PROVINCIAL NOTICE NO. 1369 OF 2006

“NOTICE IN TERMS OF SECTION 105(2) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000: SUBMISSION OF INFORMATION BY MUNICIPALITIES PRIOR TO THE DISPOSAL OF IMMOVABLE PROPERTY

SCHEDULE

In terms of Section 105(2) of the Local Government : Municipal Systems Act, 2000 (Act No. 32 of 2000), read with Section 155(6) and 155(7) of the Constitution of the Republic of South Africa 1996, the information required in this Schedule, must be submitted by all Municipalities within the Province of KwaZulu-Natal, to the Member of the Executive Council for the Province of KwaZulu-Natal responsible for local government (“the MEC”), in respect of any intended sale of immovable property in terms of the provisions of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and the Municipal Supply Chain Management Regulations, made in terms of the Local Government: Municipal Finance Management Act, 2003, and published in Government Notice R.868 on 30 May 2005.

1. *Prior to the implementation of any decision to dispose of immovable property, each Municipality must submit the following information to the MEC for his comment :-*
 - (a) *The nature of the immovable property to be disposed of;*
 - (b) *The market related value of the said immovable property;*
 - (c) *The reasons for the disposal of the said immovable property; and*
 - (d) *The anticipated cost to the Municipality in disposing of the said immovable property.”*