

UBUNTU MUNICIPALITY

POLICY FOR THE DISPOSAL OF THE MUNICIPALITY'S LAND AND OTHER IMMOVABLE CAPITAL ASSETS

Approved by Council on _____ under item _____, with effect from _____

INDEX

1. Introduction
2. Definitions
3. Responsibilities
4. Key principles
5. Accounts within which land assets are held
6. Categories of the Municipality's land assets
7. Manner of disposal of the municipality's various categories of land assets
8. Selected tender
9. Unsolicited proposal
10. Transparency and prudence control
11. Protection of the public interest
12. Transactions with provincial or national governments

1. INTRODUCTION

- 1.1 The purpose of this Policy for the Disposal of the Municipality's Immovable Capital Assets ("the Disposal Policy") is to provide a framework for the management and disposal of the municipality's land and other immovable capital assets that are not needed to provide the minimum level of basic municipal services and that are surplus to the municipality's requirements, in a manner that primarily promotes Broad Based Black Economic Empowerment through property ownership, development and use as well as first time entry of previously disadvantaged individuals into the property market.
- 1.2 The Municipality's land and other immovable capital assets shall be disposed of in the manner as provided for in paragraph 6 below, and in accordance with the key principles espoused in paragraph 3 below. The Property Management Unit of the municipality is responsible for the administration of the Disposal Policy, and shall in this regard, in consultation with and with the assistance of the Supply Chain Management Unit of the municipality, be responsible for the administration of the competitive bidding process relating to the disposal of the Municipality's land and other immovable capital assets as contained in the Supply Chain Management Policy. The final recommendation of the bid adjudication committee will be submitted to the Municipal Manager for approval and be tabled in council for notice.
- 1.3 In accordance with the provisions of section 14(5) of the Local Government : Municipal Finance Management Act, 2003 (Act No 56 of 2003) ("the MFMA"), the transfer of ownership of a capital asset of the Municipality must be fair, equitable transparent, competitive and consistent with the Disposal Policy. The Municipality may not transfer ownership as a result of a

sale or other transaction, or otherwise permanently dispose of a capital asset that is needed to provide the minimum level of basic municipal services.

- 1.4 Immovable capital assets that are not needed for the provision of basic municipal services may be disposed of, but only after the Council, in a meeting open to the public has considered a report with recommendations submitted by the Property Management Unit, and:
 - 1.4.1 has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services and may therefore be disposed of; and
 - 1.4.2 has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.
- 1.5 Immovable capital assets that are sold, must be sold at market related prices, unless the public interest or the plight of the poor demands otherwise. Immovable capital assets that are leased, must be leased at market related rates, unless the public interest or the plight of the poor demands otherwise. In the event that immovable capital assets are traded-in for other immovable capital assets, the highest possible trade-in price must be negotiated. All fees, charges, rates, tariffs, scales of fees or other charges relating to the leasing of property must be paid regularly and reviewed annually.
- 1.6 It is a reserved power of the Council to decide on each transaction of procurement of immovable capital assets, or the disposal of the Municipality's land or other immovable capital assets that are not needed to provide a minimum level of basic municipal services, which power may not be delegated to either an official or a councillor.

2 DEFINITIONS.

In this land disposal Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003), has the meaning so assigned, and:

- (a) **“basic municipal service”** means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety or the environment;
- (b) **“bid”** means a written offer submitted in a prescribed or stipulated form, in response to an invitation by the Municipality for a procurement or disposal, as part of the competitive bidding process of the Municipality;
- (c) **“capital asset”** means the non consumable movable and immovable property, including land, of the Municipality;
- (d) **“Council”** means the Municipal Council of the **UBUNTU** Local Municipality, its legal successors in title and its delegates;
- (e) **“disposal”** means a process of preparing, negotiating and concluding a written contract which involve the alienation of a capital asset, including a capital asset no longer needed by the Municipality or rights in respect thereof, by means of a sale, a lease or a donation;

and **“dispose”** has a similar meaning;
- (f) **HDI** means a Historically Disadvantaged Individual that is a South African citizen;

- (i) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) (“the Interim Constitution”); and/or
 - (ii) who is female; and/or
 - (iii) who has a disability;
- (g) “Housing Fund Land (HFL)”** means land which was acquired through State loans and finances.
- (h) “MFMA”** means the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003);
- (i) “Municipality”**, means the **UBUNTU** Local Municipality, and when referred to as –
- (i) an entity, means a municipality as described in section 2 of the Systems Act;
 - (ii) a geographic area, means the municipal area determined in terms of the Local Government : Municipal Demarcation Act, 1998 (Act No 27 of 1998);
- (j) “Public Improvement Fund Land (PIFL)”** means land generally purchased with the municipality’s funds.
- (k) “responsive bid”** means a bid which conforms to all the terms, conditions and specifications contained in the bid documentation without material deviation or qualification;
- (l) “SCM Policy”** means the Supply Chain Management Policy;
- (m) “SCM Unit”** means the Supply Chain Management Unit which is under the management and control of the Chief Financial Officer, and that is responsible for the implementation and management of the SCM Policy;
- (n) Upset price** means the reserve price of the municipality.

3 RESPONSIBILITIES

- 3.1 The municipality has a core responsibility to acquire and avail land and buildings, in the first instance, for its own use for purposes of developing and maintaining municipal infrastructure, promoting service delivery and for facilitating social and economic development and spatial integration. Land assets unrelated to these responsibilities are, by implication, surplus to the municipality’s requirements although future requirements must be acknowledged and hence the need to hold immovable property in reserve.
- 3.2 The municipality has a further responsibility in terms of acquiring, managing, developing and releasing its land, buildings and rights on behalf of its residents and ratepayers. In this regard the key consideration is that the best interests of the municipality (and thus its residents) rather than that of individuals should be paramount in all real estate transactions that the municipality enters into. This demands that, in all transactions that the municipality enters into, there should be maximum benefit to the municipality, its operational requirements and the broader community.
- 3.3 Certain interventions are regularly necessary in land transactions pursued by the municipality as compared to those of the private land and property market. As the private market is solely

concerned with maximising capital gain, as against the role of the municipality in acting in the best interests of its citizens, it follows that the municipality will not singularly follow the processes and values of that market. Moreover, because the historic accumulation of land and property is highly varied, this might need to be acknowledged in terms of future transactions.

- 3.4 Land and buildings affect the municipality's entire organisation. Therefore, the municipality's policy in this respect must act in support of sectoral policies such as economic development, environment management, land use, housing, social and community infrastructure, physical planning and infrastructure, and culture and recreation. Market forces will always be the point of departure in any land or property transaction and this must therefore be recognised and acknowledged.
- 3.5 A policy in respect of immovable property includes any right, interest or servitude therein or there over, and must therefore also take account of other legislation, policies and practices inter alia relating to land use, health, environment (both natural and built), and safety. The municipality, in subscribing to affirmative action principles, must therefore incorporate these principles within its real estate process to redress practices of the past.

4 KEY PRINCIPLES

- 4.1 The key principles of the Disposal Policy are to ensure that immovable capital assets owned by the municipality that are not needed to provide the minimum level of basic municipal services, and that are surplus to the municipality's requirements, are sold to:
- 4.1.1 promote PDI participation in property market opportunities (property development, management, investment employment, commercial and residential);
 - 4.1.2 build strong, integrated communities;
 - 4.1.3 redress spatial inequalities;
 - 4.1.4 promote access to services, amenities, transport and employment;
 - 4.1.5 build a competitive advantage for HDI's in terms of market entry and participation (levelling the playing fields);
 - 4.1.6 encourage and foster broad based empowerment in terms of distribution of ownership, labour participation, capital, skills development, equity participation and end user benefit;
 - 4.1.7 focus on first time entry by HDI's into the property market with a view to enlarging the beneficiary pool;
 - 4.1.8 further the objectives of the municipality's integrated development plan;
 - 4.1.9 encourage flexibility and creativity in property transactions to address the changing needs and priorities of the municipality, and in particular the needs of the poor;
 - 4.1.10 promote access by HDI's to the social and economic benefits of property ownership, development and use;
 - 4.1.11 encourage the use of property as a catalyst for local and social development.

5 ACCOUNTS WITHIN WHICH LAND ASSETS ARE HELD

- 5.1 Public Improvement Fund Land (PIFL) refers to land generally purchased with the municipality's funds. In the context of this Disposal Policy, it is a fixed asset, which is now not directly required for municipal purposes or programmes, although its release could act in support of such a programme.
- 5.2 Housing Fund Land (HFL) is land which was acquired through State loans and finances in support of past housing initiatives based upon previous apartheid policies of the then government. Accordingly the then Housing Development Acts (No 2, 3 and 4 of 1987) previously prescribed how transactions would take place and gave little or no flexibility. It is recorded that this legislation was repealed by the Housing Act (No 107 of 1997).

6 CATEGORIES OF MUNICIPALITY'S LAND ASSETS

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

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

7.1 Residential land incapable of development on its own

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

7.2 Residential land capable of development on its own (PIFL)

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

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

- 7.3.1 Ownership will be offered in terms of pricing and an allocation process by the General Manager: Housing.

7.3.2 Bulk land parcels will only be released for disposal if it is identified as available for disposal by the General Manager: Housing.

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

7.4.1 These are typically land parcels that have been acquired for a capital project, which has yet to commence. In such instances:

7.4.1.1 the property will be offered on a short-term lease basis;

7.4.1.2 The rental will be at a market rate, unless determined otherwise by the Council;

7.4.1.3 The property will be offered by private treaty.

7.5 Commercial and Industrial land incapable of development on its own

7.5.1 Such land:

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

7.5.1.2 will be priced at market value;

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

7.6 Commercial and Industrial land capable of development on its own

7.6.1 Ownership will be offered by public competition.

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

7.6.3 Might be subject to conditions in support of certain desires or programmes of the Council.

7.7 Commercial or Industrial land might be located within an area of specific focus or be subject to a specific developmental or social programme.

7.7.1 In such instances:

7.7.1.1 the maximisation of return will not necessarily be the determinant factor.

7.7.1.2 the desires of Council will be clearly articulated through a competitive bidding process.

7.7.1.1 will be subject to development clauses to ensure that Council's aims are achieved.

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

7.7.1.3 the competitive bidding process will be utilised in such instances.

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

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

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

7.9 Social Sites from PIFL

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

7.10 Social Sites from HFL

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

7.11 Sport-Amateur Bodies

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

- 7.11.1.1 land will be offered in an open process;
- 7.11.1.2 land will be offered on a leasehold title basis;
- 7.11.1.3 the lessee will be restricted to amateur status;
- 7.11.1.4 the lease will be subject to development clauses to ensure the discharge of intentions;
- 7.11.1.5 rental will be established on the basis of a nominal rental for the total land component of the lease as may be approved by Council from time to time, together with 50% of the actual market value of the land occupied by any building development undertaken by the Body, such percentage being determined by Council from time to time;
- 7.11.1.6 the lessee will not be liable for rates, but will be responsible for the costs of services consumed;
- 7.11.1.7 the lease will be subject to conditions to allow the Council, through its relevant Department/s to utilise the grounds, subject to further terms and conditions as agreed by the Lessee and the Council;
- 7.11.1.8 the lease will preclude discrimination;
- 7.11.1.9 the lease will recognise that Council has a limited responsibility in terms of providing for sporting and recreational opportunities;
- 7.11.1.10 the lease will ensure that Council retains a minimum base of sport and recreational venues, which might vary from community to community as well as be constrained by operating and capital budgets;
- 7.11.1.11 where existing facilities are being taken over, the lease will recognise the asset value of development already existing, whether this has been directly funded by Council or not

7.12 Sport-Professional Bodies

- 7.12.1 It is recognised that certain sporting bodies could move to full professional status over time, or might already be professional bodies when seeking a land development opportunity from the Council. In instances where there is financial benefit to be derived by an owner, owners or shareholders of a "club" a differentiation will be made from those agreements with amateur bodies in terms of the rentals that would be payable.
- 7.12.2 Land rental will be at its full economic value or percentage thereof as may be specifically determined by Council, or alternatively a percentage of all financial turnover will be levied, such percentage being determined by Council from time to time.
- 7.12.3 The contribution the organisation makes to the TOWNS and that sporting code, will be taken into account in considering the appropriate percentage. The organisation will be responsible for rates.

8 SELECTED TENDER

- 8.1 In the event that property has a limited number of interested parties, or where the property has been designated for a specific use, a selected tender would be called.

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

9 UNSOLICITED PROPOSAL

- 9.1 It is important that the municipality is in a position to entertain unsolicited proposals on its portfolio. Such proposals may inter alia include property development proposals, land sales and leases. In this regard the following principles will apply:
- 9.1.1 proposals received will be analysed and evaluated by the municipality;
- 9.1.2 realistic propositions will be advertised in the media to elicit competitive proposals or objections from the public;
- 9.1.3 should the advertisement elicit a response from the market, then a competitive proposal call will be initiated by means of an invitation to bid;
- 9.1.4 the final lease or sale transaction will be submitted to the council for approval;
- 9.1.5 the prudent control will be by way of the market valuation certificate.

10 TRANSPARENCY AND PRUDENCE CONTROL

- 10.1 The claimed empowerment benefits are applied entirely at the discretion of the municipality, and the municipality retains the right to approve or reject any claim.
- 10.2 As a local authority, it is important that all land transactions of the municipality involving real rights (sales, servitudes and leases) are conducted in a transparent manner with a high degree of prudence control. It is however advisable to balance the interests of transparency with commercial reality to ensure that entrepreneurial endeavour is not compromised, and that the property industry is not discouraged from making unsolicited proposals on properties in the portfolio.
- 10.3 In this regard the following principles will apply:
- 10.3.1 All transactions initiated by the public involving real rights to property, will be advertised in the media;
- 10.3.2 Where property is offered by the municipality to the market, the following principles will apply:
- 10.3.2.1 land use and bulk service contributions will be finalised by the municipality;
- 10.3.2.2 the offer to lease or purchase will be advertised in the media;

- 10.3.2.3 the proposal call or bid documentation will be made available both electronically and in hard copy for a fee;
- 10.3.2.4 the proposal call or bid will be either on a sealed bid basis or by dynamic pricing auction;
- 10.3.2.5 in the event that the property has a limited number of interested parties, or where the property has been designated for a specific use, a selected bid would be called for;
- 10.3.2.6 in the case where there is only one interested party in the property with a low value, a sale or lease can be concluded with that party;

11. PROTECTION OF PUBLIC INTEREST

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

12. TRANSACTIONS WITH PROVINCIAL OR NATIONAL GOVERNMENTS

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