



**STELLENBOSCH**  
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

**POLICY ON**

**THE MANAGEMENT OF STELLENBOSCH MUNICIPALITY'S IMMOVABLE PROPERTY**

**DRAFT**

**Directorate: Integrated Human Settlements**

**Department: Property Management**

**Approved: (2013-11-06 Draft)**

## PREAMBLE

Stellenbosch Municipality is the owner of a large number of Immovable Properties. In the exercise of its powers, duties and functions Council has the right to acquire, hold, enhance, lease and alienate Immovable Property. The inequitable spread of ownership of Immovable Property throughout the municipal area and the historical causes thereof are recognized, and Council acknowledges that it has a leading role to play in redressing these imbalances by ensuring that the Immovable Property assets under its control are dealt with in a manner that ensures the greatest possible benefit to the Municipality and the community that it serves.

**WHEREAS** Stellenbosch Municipality is the custodian of the Immovable Property of the Municipality and is responsible for the proper management and administration thereof;

**WHEREAS** Stellenbosch Municipality is required and committed to manage its Immovable Property in a fair, transparent and equitable manner; and

**WHEREAS** Stellenbosch Municipality realise that Immovable Property held by it, should be dealt with in a manner which will ensure the greatest benefit to the Municipality and the public in a sustainable manner;

### **AND IN ORDER TO-**

- make available economic opportunities in the municipality;
- promote an efficient administration and good governance; and
- create a culture of accountability, openness and transparency in its administration or in the exercise of its powers or the performance of its functions, by giving effect to the right to just administrative action,

**NOW THEREFORE** this policy provides, as follows:

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## CHAPTER 1: INTERPRETATION, SCOPE, PURPOSE AND OBJECTIVES OF POLICY

### 1. DEFINITIONS

1.1 In this policy, unless inconsistent with the context, the following expressions bear the meanings assigned to them below:

“**acquisition**” means to acquire by way of purchase or lease.

“**adequate notice**” means a notice period of not less than 30 days within which representations, comments or objections may be made.

“**advertise**” means the giving of adequate notice of the nature and purpose including the material substance of the proposed administrative actions, by publishing a notice in the newspaper, and where deemed necessary by the Municipal Manager, any additional form of notice, which may include-

- (a) serving of a notice; or
- (b) displaying on a notice board; or
- (c) holding a public meeting.

“**agricultural allotments**” means portions of agricultural land, measuring not more than 5ha each, demarcated and set aside for “*bona fide*” emerging farmers.

“**alienate**” means to dispose with ownership of Immovable Property in favour of another person with the intention of transferring the ownership of the Immovable Property to the acquirer thereof.

“**BBBEE Act**” means the Broad-Based Black Economic Empowerment Act, 53 of 2003.

“**BEE**” means the economic empowerment envisaged by the BEE Act of all black people including women, workers, 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;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers cooperatives and other collective enterprises;
- (c) human resources and skill development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investments in enterprises that are owned or managed by black people.

“**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;

**“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;

**“Black people”** means Africans, Coloured and Indians, as referred to in the B-BBEE Act, No. 53 of 2005.

**“calendar month”** means a period extending from a date in one calendar month to the preceding date in the following month;

**“chief financial officer”** means a person designated in terms of Section 80(2)(a) of the MFMA.

**“close”** in relation to a public street or public place, means to close for all public purposes or for vehicular or pedestrian traffic only.

**“corrupt practice”** means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution;

**“commercial service”** means a commercial service as defined in section 1 of the MATR;

**“competitive bidding process”** means a process whereby prospective bidders are invited through public media to submit bids and such bids are administered in a fair, transparent, competitive and cost effective manner;

**“constitution”** means the Constitution of the Republic of South Africa, 1996

**“council”** means the Council of the Municipality of Stellenbosch and includes any Political Structure, Political Office Bearer, Councillor or Official, acting under delegated authority.

**“disposal”**, means the sale, exchange, donation, or letting of Immovable Property, the conclusion of any form of land availability agreement in respect of immovable property with any person and the registration of any real or personal right in respect of Municipal land, including servitudes;

**“emergency”** means an emergency dispensation in which one or more of the following conditions are present –

the possibility of human injury or death;

the prevalence of human suffering or deprivation of rights;

the possibility of damage to property, or suffering and death of livestock and animals;

the interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the Municipality as a whole;

the possibility of serious damage occurring to the natural environment;

the possibility that failure to take necessary action may result in the municipality not being able to render an essential service; and

the possibility that the security of the state could be compromised.

**“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.

**“fair market value”** means the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller after proper marketing wherein the parties have each acted knowledgeable, prudently, and without compulsion.

**“fraudulent practice”** means a misrepresentation of fact in order to influence a selection process and includes:

collusive practices among bidders (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the municipality of the benefits of free and open competition.

**“high value”** means that the fair market value of the Immovable Property exceeds R50 million or 1% of the total value of the capital assets of the Municipality as determined from the latest available audited annual financial statements of the Municipality, or such lower amount as may from time to time be determined by resolution of the Council of the Municipality;

**“housing stock”** means housing units that are leased to members of the public and or members of staff as well as housing sub-subsidised units that are earmarked for disposal to qualifying beneficiaries.

**“IDP”** means the approved Integrated Development Plan of Stellenbosch Municipality, as provided for in Chapter 5 of the Systems Act.

**“Immovable Property”** includes, but is not limited to –

- (a) any land registered under separate title and includes the ownership therein, whether in full or reduced form, and any improvements in, on, over or under such land or unregistered land where the ownership can be determined/property or buildings or any share therein registered in the name of a person or entity, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person or entity;
- (b) a right to an exclusive use area held in terms of a notarial deed of cession;
- (c) a real right registered against Immovable Property in the name of a person or entity, excluding a mortgage bond registered against the Immovable Property;
- (d) any share in a share block company as defined in section 1 of the Share Blocks Control Act, 59 of 1980;
- (e) a *“public place”* or *“public street”* as defined in the Land Use Management Ordinance, No 15/1985;
- (f) Immovable Property as defined in section 107 of the Deeds Registries Act, 47 of 1937; and including property consisting of land, buildings, crops, or other resources still attached to or within the land or improvements or fixtures permanently attached to the land or a structure on it.

**“Income tax act”** means Act 58/1962

**“land”** means-

- (a) any land registered under separate title and includes the ownership therein, whether in full or reduced form, and any improvements in, on, over or under such land; or
- (b) unregistered land where the ownership can be determined.

**“lease”** means the letting of Municipal land/Immovable Property/buildings in terms of which the use and enjoyment of the land/property/building is granted for a specified period exceeding 1 month without ceding legal ownership in the asset or any form of land availability agreement in respect of Immovable Property and letting have a corresponding meaning.

**“lease agreement”** means a written agreement entered into between the Municipality and the lessee specifying rights and duties pertaining to the exclusive use of Immovable Property for a continuous period of time longer than thirty (30) calendar days, and which sets forth the terms and conditions of the use, management and control of the Immovable Property.

**“Local Black people”** means Africans, Coloured and Indians, as referred to in the B-BBEE Act, No. 53 of 2005, who normally resides within the municipal area of Stellenbosch Municipality;

**“Local Disabled people”** means people with disabilities who normally resides within the municipal area of Stellenbosch Municipality.

**“Local women”** means women who normally resides within the municipal area of Stellenbosch Municipality.

**“MATR”** means the Municipal Asset Transfer Regulations promulgated in terms of the MFMA and published in *Government Gazette* No. 31346 of 22 August 2008;

**“MFMA”** means the Local Government: Municipal Finance Management Act, 56 of 2003, including any Regulations promulgated in terms thereof from time to time;

**“municipality”** means the Stellenbosch Municipality established in terms of Section 4 of the Establishment Notice (PN 489 of 22 September 2000), as amended;

**“municipal area”** means the area under the jurisdiction and control of Stellenbosch Municipality.

**“municipal function”** means any of those functions set out in Schedule 4 B and 5 B of the Constitution.

**“municipal land audit (MLA)”** means the audit of municipal owned properties which was conducted during 2003.

**“municipal manager”** means a person appointed in terms of Section 82 of the Municipal Structures Act, No 117 of 1998 as the head of the Municipality’s administration and accounting officer of the Municipality or his/her delegate.

**“municipality’s property”** or **“property”** means all the Immovable Property owned and managed by the Municipality in terms of this Policy;



**“Municipal Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000).

**“non-Significant Property Right”** means a Property Right in respect of the following categories of Immovable Property –

- a) Property rights in the Immovable Property with a Value more than R10 million. where the Property right is requested for a period less than 3 years.
- b) Property right in the Immovable Property with a Value less than R10 million, where the Property Right is requested for a period less than 3 years.

**“non-viable Immovable Property”** means Immovable Property that, owing to urban planning, physical constraints or extent cannot be developed on its own or function as a separate entity and that can therefore become functional only if used by an adjoining owner in conjunction with such owner’s Immovable Property;

**“official”** means an employee of the Municipality or a person seconded to the Municipality or contracted by the Municipality to work as a member of staff otherwise than as an employee as defined in section 1 of the MFMA;

**“owner”** in relation to Immovable Property, means the person in whose name that Immovable Property is registered in a deeds registry, which may include the holder of a registered servitude right or lease and any successor in title of such a person, and includes any person authorized to act as such by the registered owner, any person who in law has been entrusted with the control of such assets or a person to whom Immovable Property has been made available in terms of a land availability agreement.

**“plight of the poor”** means the needs of the people that are vulnerable and unable to meet their socio-economic needs independently or to support themselves and their dependents and are in need of social assistance.

**“public interest”** means disposal or letting to:-

- a) promote the achievement of equality by taking measures to protect or advance persons or categories of persons, disadvantaged by unfair discrimination;
- b) afford black people who are South African citizens a preference in respect of the disposal and letting of Immovable Property as envisaged in Section 9(2) of the Constitution;
- c) promote BBBEE through disposal and letting;
- d) ensure and promote first time home ownership and enterprise development of black people that qualify in terms of the Municipality’s GAP housing policy have access to adequate housing on a progressive basis;
- e) advance agricultural projects for land reform purposes;
- f) promote welfare and charitable purposes including non-profit rehabilitation facilities; shelters for the indigent and destitute, youth development and drug counseling;
- g) foster equitable access to public amenities, social and/or sports clubs and similar organizations by providing discounted prices or rates in the event that the beneficiaries or the membership component of such institution or body consist of at least 50% black people and/or the membership or subscription fee of black people is

less than 50% of the normal membership or subscription fee.

**“property laws”** means the relevant provisions of the MFMA and the MATR collectively;

**“property right”** means a right to use, control or manage an Immovable Property for a period exceeding a calendar month, as granted by the Municipality without ceding legal ownership in the Property. For the avoidance of any doubt, a servitude, way leave or encroachment in, on, over or under Immovable Property granted by the Municipality, or a lease agreement entered into by the Municipality as lessor, constitutes a Property Right;

**“private treaty”** means where the proposed disposal involves a disposal without public competition as defined in the MFMA to a non-government entity.

**“property transaction”** means either a Disposal of Im m o v a b l e Property or the granting of a Property Right in Immovable Property;

**“public place”** means any Immovable Property indicated on an approved plan, diagram or map as an open space of which ownership as such vests in the Municipality.

**“public street”** means-

- (a) any street which has at any time been-
  - (i) used without interruption by the public for a period of at least thirty years;
  - (ii) declared or rendered such by a Municipality or other competent authority; or
  - (iii) constructed by Council; and
  - (iv) constructed by someone other than Council and which vests in the Municipality.
- (b) any Immovable Property, with or without buildings or structures thereon, which is shown as a street on-
  - (i) any plan of subdivision or diagram approved by Council or other competent authority and acted upon, or
  - (ii) any plan or diagram as defined in Section 15 of the Land Survey Act, 1997 (Act 8 of 1997), registered or filed in the office of the Registrar of Deeds or the Surveyor-General’s office.

unless such Immovable Property is on such plan or diagram described as a private street.

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

**“SCM policy”** means the Supply Chain Management Policy of the Municipality, as approved from time to time and implemented in terms of section 111 of the MFMA, read with the SCM Regulations;

**“SCM regulations”** means the Municipal Supply Chain Management Regulations promulgated in terms of the MFMA and published under GN 868 in *Government Gazette* No. 27636 of 30 May 2005;

**“significant Property Right”** means a Property Right with a value in excess of R10 million which is granted for a period exceeding 3 years;

**“spatial development framework”** means the framework contemplated in Section 26(1)(e) of the Municipal Systems Act.

**“Systems act”** means the Local Government: Municipal Systems Act, 32 of 2000, including any Regulations promulgated in terms thereof from time to time;

**“unsolicited bid”** is a bid/proposal received from a developer to acquire Immovable Property, or rights in immovable property, that is owned by the Municipality, outside the normal bidding process, i.e. without the Municipality having asked for such proposal/bid.

**“viable Immovable Property”** means Immovable Property that can be developed and function as a separate entity capable of registration by the Registrar of Deeds.

- 1.2 Words not defined in this Policy have the meaning assigned to them in the MATR.

## 2. SCOPE AND PURPOSE

- 2.1 The purpose of this Policy is to provide a framework for the management and disposal of the municipality’s Immovable Property that are not needed to provide the minimum level of basic municipal services and that are surplus to the municipality’s requirements.
- 2.2 The Municipality’s Immovable Property shall be disposed of in the manner as provided for in this policy. The Property Management Department is responsible for the administration of this Policy, and shall in this regard, in consultation with the Supply Chain Management Unit of the municipality, be responsible for the administration of the competitive bidding process relating to the disposal and leasing of the Municipality’s Immovable Property.
- 2.3 In compliance with the provisions of section 14(1) of the MFMA, the Municipality shall not transfer ownership as a result of a sale or other transaction, or otherwise permanently dispose of an Immovable Property that is needed to provide the minimum level of basic municipal services. The following municipal services are classified as basic municipal services for the purposes of section 14(1) of the MFMA, and this classification must be used by the administration as criteria to compile a List of all Municipal Immovable Property and Buildings:
- a) Electricity services
  - b) Water services
  - c) Sanitation services
  - d) Refuse removal, refuse dumps and solid waste disposal services
  - e) Municipal Roads
  - f) Public Places
  - g) Cemeteries

### 3. RESPONSIBILITIES

- 3.1 The Municipality has a core responsibility to acquire and avail Immovable Property 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. Immovable Property 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. The Municipal Council still needs to decide in a Council Meeting open to the public whether the Immovable Property which are regarded as surplus are not needed to provide the minimum level of basic municipal services.
- 3.2 The municipality has a further responsibility in terms of acquiring, managing, developing and releasing its Immovable Property, buildings and Property 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 Immovable Property transactions that the municipality enters into. This demand 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 Immovable Property and buildings affect the municipality's entire organization. Therefore, the municipality's policy in this respect must act in support of sectoral policies such as economic development, environment management, land use, housing, social and community infrastructure, physical planning and infrastructure, and culture and recreation. Market forces will always be the point of departure in any Immovable Property transaction and this must therefore be recognized and acknowledged.
- 3.4 The Municipality should dispose of Immovable Property only in circumstances where the Municipality is satisfied that it cannot derive a reasonable economic and/or social return from continued ownership of the Immovable Property.

## CHAPTER 2: POLICY FRAMEWORK, APPLICATION AND GUIDING PRINCIPLES

### 4. LEGISLATIVE AND POLICY FRAMEWORK FOR THE MANAGEMENT OF THE MUNICIPALITY'S IMMOVABLE PROPERTY

4.1 The legislative framework for the management of the Municipality's Immovable Property is contained in a number of legislation, including but not limited to:

4.1.1 the MFMA, in particular section 14, which deals with disposal of capital assets (i.e Immovable Property as defined herein);

4.1.2 the MATR, which governs –

- a) the transfer and disposal of capital assets by municipalities and municipal entities; and
- b) the granting by municipalities and municipal entities of rights to lease, use, control or manage capital assets;

4.2 The object of this Policy is to provide a practical framework for the management of the Municipality's Immovable Property.

4.3 This Policy must be read together with and in accordance with the Property Laws and all other laws which deal with Immovable Property.

### 5. APPLICATION OF THE POLICY

5.1 Section 14 of the MFMA and the MATR apply to capital assets, which are defined in the MATR to include Immovable Property, as well as certain movable assets. This Policy only applies to Immovable Property.

5.2 This Policy does not apply to:

5.2.1 The municipality's housing stock *inter alia* housing on municipal Immovable Property and the transfer of that municipal Immovable Property for the poor to beneficiaries of such housing.

5.2.2 Property owned by the Municipality which is subject to a Public Private Partnership.

5.3 In terms of section 40 of the Municipal Supply Chain Management Regulations, a Municipal Supply Chain Management policy must provide for an effective system of disposal management for the disposal and letting of assets. For that purpose of immovable assets of the municipality, this policy must be seen as the disposal management policy of the municipality.

## 6. GUIDING PRINCIPLES

- 6.1. The following principles and values should underpin Immovable Property acquisition and disposal activities:
- (a) The use of Council's Immovable Property to promote social integration, to redress existing spatial inequalities, to promote economic growth, to build strong, integrated and dignified communities and to provide access to housing, services, amenities, transport and opportunities for employment.
  - (b) The promotion of access by black people to the social and economic benefit 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.

## CHAPTER 3: RESERVATION AND MANAGEMENT OF IMMOVABLE PROPERTY

### 7. AUTHORITY TO RESERVE AND MANAGE IMMOVABLE PROPERTY

- 7.1 Council may reserve and manage Immovable Property in its ownership for municipal purposes aligned with its operational needs.

### 8. KEY PRINCIPLES PERTAINING TO THE RESERVATION AND MANAGEMENT OF IMMOVABLE PROPERTY

- 8.1 Unless it is precluded from doing so by law or by the conditions in terms of which Immovable Property was acquired and subject to observation of due statutory process and alignment with Council's strategic objectives, Council may:

- (a) use Immovable Property in its ownership to promote social integration, to redress existing spatial inequalities, to build strong, integrated and dignified communities and to provide access to housing, services, amenities, transport and opportunities for employment on a temporary or permanent basis.
- (b) reserve for future use Immovable Property in its ownership.
- (c) enhance Immovable Property in its ownership by pursuing the amendment of existing rights, establishment of new rights and the provision of municipal services.
- (d) improve Immovable Property in its ownership by the erection of structures thereon.
- (e) permit Immovable Property to be managed on behalf of Council, permit it to be enclosed and permit it to be cultivated.

- 8.2 When immovable property under the control or management of Council is encroachment upon, the Council may take such steps as may, in the opinion of the Council, be necessary to remove or regularize such encroachment. In such instances Council may reduce the extent of a public place or public street which is encroach upon by the extent of the encroachment or by such greater extent as may, in Council's interest, be desirable.

### 9. SERVICE LEVEL AGREEMENTS BETWEEN DEPARTMENTS OF THE MUNICIPALITY

- 9.1 In all circumstances where an Immovable Property or Properties is/are reserved for a purpose which falls within a functional responsibility of another line department within the Municipality, the Municipality's Property Management Department will enter into a service level agreement (SLA) with that line department.

- 9.2 An SLA shall regulate the respective roles and responsibilities of the Property Management Department and the line department in respect of the following reserved Immovable Property(ies):

- a) Immovable Properties used by the line department itself, for example, where the line department uses the Immovable Property(ies) for provision of a municipal service (where the municipal service is provided through an internal mechanism as provided for in the Systems Act);
- b) Immovable Properties used by third party service providers, for example, where the line department appoints a service provider to provide a municipal service;
- c) Immovable Properties in respect of which the line department has appointed a private party to manage the Immovable Property, for example, in terms of facilities management agreements.

9.3 The SLA's shall include provisions dealing with:

- a) the purpose for which an Immovable Property is reserved;
- b) a clear description of the purpose for which a private party is being appointed by the Municipality and the private party's contractual obligations in respect of both the purpose of its appointment (such as the provision of the service), as well as in respect of any Property Rights it may have been granted in respect of the Immovable Property;
- c) the manner in which both the appointment of the private party and the Property Transaction will be procured in accordance with the applicable policy provisions below;
- d) the entering into of contract(s) with the private party, and the allocation of the respective responsibilities of the line department and the Property Management Department in respect thereof;
- e) the distinct responsibilities of the Property Management Department and the line department in respect of monitoring and oversight of the use, control and management of the Immovable Property once the private party has been appointed;
- f) the line department's responsibilities in respect of the hand-over of reserved Immovable Property back to the Property Management Department once the line department no longer requires the Immovable Property for the purpose for which it was reserved.

9.4 Given that the Property Management Department is the custodian of the Municipality's Immovable Property, it is the only department within the Municipality that may conclude a contract with a successful tenderer in respect of a Disposal and the granting of a Property Right . Other line Departments may conclude agreements ancillary to Immovable Property assets including but not limited to Management Agreements and Facilities Management Agreements so far as such agreements do not grant the third party the right of tenure.

9.5 Where it becomes necessary or appropriate to do so, the Property Management Department and the line department shall endeavour to enter into a transaction-specific SLA.



## CHAPTER 4: ACQUISITION OF IMMOVABLE PROPERTY AND RIGHTS IN IMMOVABLE PROPERTY

### 10. AUTHORITY TO ACQUIRE

- 10.1 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.;
- 10.2 Council may expropriate Immovable Property in terms of the Expropriation Act (Act 63 of 1975), or any other applicable legislation from time to time, provided that such expropriation shall only be for public purposes or in the interest of the public.

### 11. GENERAL PRINCIPLES

- 11.1 Council must ensure that decisions to acquire Immovable Property (land, property, buildings and land improvements) are based on sound business and planning principles which are fully in line with and compliant with:
- (a) Council priorities and initiatives;
  - (b) Corporate and service plans;
  - (c) Planning Policies; and
  - (d) Regional plans and area planning schemes.
- 11.2 The Property Management Department undertakes the acquisition in conjunction with the service departments (purchase or expropriation) of Immovable Property (land) and rights in Immovable Property (servitudes) for municipal purposes on behalf of all the service departments.
- 11.3 It is the responsibility of a Service Department to timeously, by a predetermined date as specified by the Property Management Department, which time period shall be reasonable advise the Property Management Department of the Immovable Property or servitudes that are required in a particular financial year. The service department is required to furnish the Property Management Department with the full particulars of the Immovable Property 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 Immovable Property or servitude if a portion of a farm or erf or a servitude is required.
- 11.4 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 Immovable Property or registering the Property right in the name of the Municipality in the Office of the Deeds Registry.
- 11.5 The municipality will purchase the Immovable Property or servitude at the market value of the Immovable Property or servitude as determined by a professional valuer or

at such lesser amount as may be agreed to by the seller.

- 11.6 In the case of an expropriation the compensation payable for the Immovable Property or servitude shall be determined in accordance with prescripts of the legislation in terms of which the Immovable Property or servitude was expropriated.
- 11.7 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.

## **12. ASSESSMENT**

- 12.1 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).
- 12.2 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.
- 12.3 In addition to the proposed acquisition being consistent with the objectives of planning policies and guidelines, 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.

### **13. SITE SELECTION**

- 13.1 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.
- 13.2 The Municipality's Municipal Land Audit (MLA) contains essential, surplus and under utilised properties. The Municipal Manager is required to review/consult the MLA to determine if suitable properties are available prior to any decision being made on seeking property on the open market.

### **14. VALUATIONS**

- 14.1 Valuations are required in support of an acquisition decision and must be at current market valuation as determined by a qualified valuer(s).
- 14.2 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.

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

The Municipality may acquire Immovable Property by:-

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

The Municipality usually acquire Immovable Property through the open market place by either public auction or private sale.

#### **15.2 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.

#### **15.3 Acquisition by expropriation**

This method should only be used under circumstances where acquisition by agreement has been rejected as being unsuitable, or the Municipality has been unsuccessful in concluding an agreement with the owner and it can be shown that the Immovable Property required is site specific and essential.

### **16. MANDATORY CONSULTATION**

- 16.1 Council shall not acquire Immovable Property 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 sub clause (a).

- 16.2 When Council advertise 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 and extent;
  - (b) the contracting parties;
  - (c) reason(s) for proposed acquisition;
  - (d) the purchase price or lease amount of the Immovable Property;
  - (e) market value of the Immovable 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.
- 16.3 If it is reasonable and justifiable under 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.

## **17. APPROVAL PROCESS**

- 17.1 Following the advertisement contemplated above, the Property Management Department shall compile an agenda item, motivating the acquisition of the Immovable Property(s) or rights in Immovable Property(s). The report should indicate which methods of acquisition was/will be used and why this specific method has been decided on.
- 17.2 The report must be considered by the person/committee who has the delegated authority to consider such application.

## CHAPTER 5: DISPOSAL OF IMMOVABLE PROPERTY AND AWARDING OF RIGHTS IN IMMOVABLE PROPERTY

### 18. AUTHORITY TO DISPOSE OF IMMOVABLE PROPERTY

- 18.1 Council may in terms of Section 14 of the MFMA, read with the MATR, dispose of Immovable Property or Property rights in Immovable Property by way of sale, letting or registration of a servitude once it is satisfied that such Immovable Property or Property rights is not required to provide the minimum level of basic municipal services and once it has considered the fair market value thereof as well as the economic and community value to be received in exchange for such Immovable Property or Property right.

### 19. DISPOSAL MANAGEMENT PRINCIPLES

#### 19.1 Core Principles

In terms of section 14(5) of the MFMA, a Disposal of Immo v a b l e Property by the Municipality must be fair, equitable, transparent, competitive and consistent with the Municipality's SCM Policy ("the Core Principles").

#### 19.2 General Principles pertaining to the disposal of Immovable Property and Property rights in Immovable Property

- 19.2.1 Unless otherwise provided for in this policy, the disposal of Viable Immovable Property shall be affected-
- (a) by means of a process of public competition; and
  - (b) at market value except when the public interest or the plight of the poor demands otherwise.
- 19.2.2 All transaction for the disposal of Immovable Property must be considered in accordance with this policy and other applicable legislation.
- 19.2.3 Before alienating Immovable Property or rights in Immovable Property Council shall be satisfied that alienation is the appropriate methodology and that reasonable economic and social return cannot be derived whilst ownership of the Immovable Property or Property rights is retained by Council.
- 19.2.4 Council reserves the right to entertain unsolicited proposals for the development of Viable Immovable Property for development purposes, with the proviso that it is in line with Council's strategic objectives and more specifically that it favours the promotion of black ownership, entrepreneurship and community upliftment.
- 19.2.5 Council may grant occupation of its Immovable Property prior to the transfer thereof on condition that a suitable sale has been entered into, that the purchase price is paid in full or alternatively that an acceptable financial guarantee is provided to secure the purchase price, that occupational rent is payable at a rate specified by Council and further that Council is indemnified against any and all claims that may arise out of the occupation of the Immovable Property by the purchaser.
- 19.2.6 Viable Immovable Property purchased from Council by a first time homeowner shall not, without Council's prior written consent, be resold within a period of 5 years of the date of transfer.

### **19.3 General principles and guidelines pertaining to the letting by council of Immovable Property**

- 19.3.1 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.
- 19.3.2 Immovable Properties that have been let shall be inspected at reasonable time periods to ensure compliance with the terms and conditions of the agreement of lease.
- 19.3.3 Council reserves the right, where necessary, to resume Immovable Property let, or a portion thereof, and to cancel an existing lease in its entirety where such Immovable Property is required for operational purposes, in pursuance of Council's strategic objectives or in the interests of the community. In such an event the lessee shall be compensated for improvements established by him/her on a basis to be determined by an independent valuator, taking into account the remaining period of the lease agreement.
- 19.3.4 No application for a lease agreement shall be processed by the Property Management Department 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.

### **20. MOST APPROPRIATE USE ASSESSMENT**

- 20.1 Before an Immovable Property is declared as surplus, and earmarked for disposal or the awarding of rights, it must first be assessed for its most appropriate use.
- 20.2 The most appropriate use for a surplus property is one which achieves an optimum balance between the following three key elements of sustainable development:
- (a) the protection of ecological processes and natural systems;
  - (b) the optimum financial return to and economic development of the municipal area; and
  - (c) the enhancement of the cultural, economic, physical and social wellbeing of people and communities.
- 20.3 The three elements of sustainability will apply to all surplus Immovable Properties, however their significance and the relationships between them will vary for individual Immovable Properties.
- 20.4 In determining the most appropriate use of surplus properties, regard should be given to:
- (a) Spatial development framework(s);
  - (b) Regional plans;
  - (c) Sectoral studies/plans;
  - (d) Government policies;
  - (e) Relevant legislation; and
  - (f) the views of interested and affected parties.

- 20.5 Where appropriate, opportunities should be provided for community involvement in the assessment process.

## **21. METHODS OF DISPOSAL AND AWARDING OF RIGHTS**

Subsequent to determining the most appropriate use of a property and after Council then having decided that the Immovable Property could be disposed of, or that rights may be awarded, the method of disposal or method of awarding rights should be determined.

Council may use any of the following methods, depending on the circumstances pertaining the specific Immovable Property:

### **21.1 Competitive Processes**

#### **21.1.1 Formal Tender**

- a) The type of a formal tender may vary, depending on the nature of the transaction:
  - i) Outright tender may be appropriate where the Immovable Property ownership is not complex, and Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.
  - ii) Qualified tenders/call for proposals will be appropriate where the Immovable Property ownership position is complex or the development proposals for the Immovable Property are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage.
  - iii) Call for proposals on a built-operate transfer (B.O.T) basis will be used if a developer is required to undertake the construction, including the financing, of a facility on Council-owned land, and the operation and maintenance thereof. The developer operates the facility over a fixed term during which it is allowed to charge facility users appropriate fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract, to enable the developer to recover its investment and operating and maintenance expenses in the project. The developer transfers the facility to the municipality at the end of the fixed term.
- b) The nature of the formal tender process is that a legally binding relationship is formed between the parties when Council accepts a tender in writing. It is essential therefore, that every aspect of the disposal is specified in the tender documents. The tender documents could include a contract for sale or lease which could be completed with the tenderer's details, the tender price and be signed by the tenderer. A binding legal agreement is created upon the acceptance in writing of a tender by Council.
- c) Such a process may, depending on the nature of the transaction, include a two-stage or two-envelope bidding process (proposal call) in terms of which only those bidders that meet the pre-qualification criteria specified in the first stage are entitled to participate in the second stage.

### 21.1.2 Public Auction

- a) Disposal by public auction may be appropriate where there is no obvious potential purchaser and where speed and the best price can be obtained by auction.
- b) The decision to dispose of Immovable Property by way of public auction must be recorded in writing and must include-
  - (i) the reasons justifying a disposal by public auction;
  - (ii) the reserve price, if any, for the auction;
  - (iii) the authority for a staff member to attend the auction and to act on behalf of the Council on the disposal.
- c) The contract for sale or lease must be ready for exchange at the auction.
- d) The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.
- e) The terms and conditions of each auction shall be determined on a project-by-project basis, appropriate to the specific characteristics and attributes of the Immovable Property, and to the Municipality's strategic objectives.
- f) Where the services of an auctioneer are utilised, the auctioneer's commission shall be payable by the successful bidder and shall not form part of the financial offer to the Municipality.

### 21.1.3 Closed Tender

- a) If a Non-Viable Immovable Property has more than one adjacent owner and if such an Immovable Property is capable of being consolidated with more than one of the properties owned by such adjacent owners, then a closed bid will be called from all the registered owners of all the adjacent properties with which the Immovable Property can be consolidated.

### 21.1.4 Unsolicited proposals

- a) It is important that the municipality is in a position to entertain unsolicited proposals in exceptional circumstances. Such proposals may *inter alia* include property development proposals, land sales and leases. In this regard the following principles will apply:
  - i) Proposals received will be analysed and evaluated by the municipality;
  - ii) Realistic propositions will be advertised in the media to elicit competitive proposals or objections from the public;
  - iii) Should the advertisement elicit a response from the market, then a competitive proposal call will be initiated by means of an invitation to bid;



- iv) The final lease or sale transaction will be submitted to the council for approval;
- v) The prudent control will be by way of the market valuation certificate.

## **21.2 Non-Competitive Processes: Private Treaty Agreements**

### **21.2.1 Non-Viable Immovable Property**

In respect of Non-Viable Immovable Property which can only be utilised by one adjacent land owner, a Property Transaction(s) may be approved without any competitive process having been followed, including in response to an unsolicited application, on the basis that no purpose would be served by a competitive process.

### **21.2.2 Viable Property: Deviation from a Competitive process**

21.2.2.1 The Municipal Manager may dispense with the competitive processes established in this policy, and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised his or her intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed:

- (a) due to specific circumstances peculiar to the property under consideration, it can only be utilized by the one person/organization wishing to enter into the Property Transaction;
- (b) 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;
- (c) sport facilities and other public amenities may be let by Private Treaty to Sport boards, Sport Federations and other similar bodies Community based bodies and non-professional sporting bodies shall be charged the tariff rentals as approved by Council from time to time. Professional sport 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.
- (d) where unsolicited applications are received for access servitudes, right of ways and way leaves over municipal land, subject to approved tariff structure.
- (e) In an emergency; due to specific circumstances peculiar to the property under consideration , it can only be utilized by the one person/organization wishing to enter into the Property Transaction;

- (f) where the person wishing to enter into the Property Transaction is the **sole provider** of the service or product in respect of which the property will be used and the use of the Property is inextricably linked to the provision of that service or product;
- (g) where the Municipal Manager is satisfied that the Property Transaction will be exceptionally beneficial to, or have exceptional cost advantages for the Municipality which would not be realised if a competitive process were to be followed by the Municipality; or will be exceptionally beneficial to the community or the natural environment;
- (h) in exceptional cases where the Municipal Manager is of the opinion the public competition would not serve a useful purpose or that it is in the interest of the community and the council, and where none of the conditions as set out in the policy provides for such exception, is permitted, and where they are not in conflict with any provision of the policy. In such cases the Municipal Manager must record full reasons for preferring such out-of hand sale or lease to those by public competition;
- (i) where any immovable property is offered for sale or lease by public competition, any remaining immovable property may be sold or leased out of hand by Council at the upset price of higher, as long as it is satisfied that market prices are stable.  

The upset price must be determined in such a way that it corresponds with a reasonable market value and must include the recoverable development costs such as municipal services, advertising and survey costs.

The position must be reviewed by Council at least every six months. Not more than one erf may be sold out of hand to a purchaser where the demand for erven exceeds the number of erven available for sale;
- (j) where unsolicited applications/proposals are received from telecommunication companies to construct or put up communication infrastructure on Council owned Property, such as masts, dishes, ect, subject to approved tariff structure;
- (k) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure;
- (l) where sale by public competition has failed to attract a purchaser and it can be established that further efforts to dispose of the property by public competition are likely to fail;
- (m) where the applicant is an organization receiving funding support from a government department-  

which makes a substantial contribution towards the outputs of such a government department; or

whose contribution to such government departments outputs would depend upon or be substantially enhanced by gaining priority to a particular property;

- (n) where the applicant is an organization receiving funding support from the municipality for the rendering of a municipal function(s) within the municipal area, on behalf of the municipality;
- (o) where the land is part of a larger area of land that is proposed for development, redevelopment or regeneration. Also, the nature and complexity of the proposed development of the overall site is such that the Council's corporate objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area;
- (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. The existing tenant shall give notice of the intention to renegotiate the lease at least six months before the date of termination;
- (q) where agricultural allotments becomes available, it can be allocated to qualifying emerging farmers on the waiting list for a lease period not exceeding 9 years and eleven months, subject to the approved tariff structure.

21.2.2.2 The Municipal Manager must record the reasons for any such deviation in writing and report them to Council.

### 21.2.3 Exchange of Land

Disposal by exchange of land will be appropriate when it is advantageous to the Council and other parties to exchange land in their ownerships and will achieve best consideration for the municipality.

Council must authorise the disposal of land by exchange with another land owner for alternative land. Reasons for justifying this manner of disposal must be recorded in writing.

A binding legal agreement will be created when a contract is exchanged for the exchange.

The exchange will usually be equal in value. However, an inequality in land value may be compensated for by other means where appropriate. In such circumstances Council must seek an independent valuation to verify that "*best consideration*" will be obtained.

## 22. DISPOSAL AND LETTING OF IMMOVABLE PROPERTY FOR SOCIAL CARE USES

21.3.1 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) Schools or centres – utilised as homes for the handicapped and disabled persons.  
Non-profit rehabilitation centres;  
Homes/centres for indigent, battered or destitute persons;  
Organisations for the homeless and elderly;  
Youth activity centres;  
Facilities for the accommodation, care and burial of animals; and  
Cemeteries, NPO funeral parlours and non-profit crematoria.

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

21.3.3 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.

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## CHAPTER 6 MANAGEMENT OF COMPETITIVE BIDS

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### MANAGEMENT OF COMPETITIVE BIDS

**23.1** For Immovable Property transactions above a contract value of R1 Million (incl. of VAT) or where the Municipal Manager deems it appropriate, taking into account the specific nature of the transaction, he/she shall establish committees for the preparation of bid documents the evaluation and adjudication of such bids, as set out hereunder.

24.

### BID DOCUMENTATION FOR COMPETITIVE BIDS

24.1 The criteria to which bid documentation for a competitive bidding process must comply, must -

- (a) take into account -
  - (i) the general conditions of contract and any special conditions of contract, if specified;
  - (ii) description of Immovable Property, including the erf number(s) and size thereof;
  - (iii) current zoning, land use and restrictive conditions;
  - (iv) nature of tenure to be granted;
  - (v) development parameter and guidelines;
  - (vi) an indication of whether the successful bidder will be responsible to apply for development rights, or whether such rights are already in place;
  - (vii) access to Immovable Property;
  - (viii) parking requirements;
  - (ix) time-frame for development;
  - (x) identification of suspensive conditions, if any, that will have to be met by the successful bidder before a legal binding relationship is formed;
  - (xi) availability of municipal services;
  - (xii) whether the successful bidder will have to make any contributions, over and above the tender amount, such as development contributions, contributions for the upgrade of services; ect.
- (b) include the preference points system to be used (if any), goals as contemplated in this policy and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish-
  - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements-

- (aa) for the past three years; or
- (bb) since their establishment if established during the past three years;
- (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards the municipality or other service provider in respect of which payment is overdue for more than 30 days;
- (iii) particulars of any property contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

## 25. PUBLIC INVITATION FOR COMPETITIVE BIDS

25.1 The procedure for the invitation of competitive bids, is as follows:

- (a) Any invitation to prospective developers/bidders to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the Municipality, or any other additional, appropriate ways, as determined by the Municipal Manager; and
- (b) The information contained in a public advertisement, must include, *inter alia*:-
  - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper;
  - (ii) a statement that bids may only be submitted on the bid documentation provided by the Municipality; and
  - (iii) date, time and venue of any proposed site meetings or briefing sessions;

25.2 The Municipal Manager may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

25.3 Bids submitted must be sealed.

25.4 Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

**26. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS**

26.1 The procedures for the handling, opening and recording of bids, are as follows:

- (a) Bids-
  - (i) must be opened in public;
  - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
  - (iii) received after the closing time shall not be considered and returned unopened immediately.
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical also each bidder's total bidding price;
- (c) No information, except the provisions in subsection (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The Municipal Manager must-
  - (i) record in a register all bids received in time;
  - (ii) make the register available for public inspection; and
  - (iii) publish the entries in the register and the bid results on the website of the Municipality.
- (e) All original bid documents must be stored safely.

**27. NEGOTIATIONS WITH PREFERRED BIDDERS**

27.1 The Municipal Manager may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiations -

- (a) does not allow any preferred bidder a second or unfair opportunity;
- (b) is not to the detriment of any other bidder; and
- (c) does not lead to a lower price than the bidder has submitted, in a case of disposal of Immovable Property, or Property rights and;
- (d) does not lead to a higher price than the bidder has submitted, in a case of acquiring of Immovable Property, or Property rights.

27.2 Minutes of such negotiations must be kept for record purposes.

**28. TWO-STAGE BIDDING PROCESS**

28.1 A two-stage bidding process is allowed for-

- (a) large complex projects;
- (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
- (c) long term projects with a duration period exceeding three years.

28.2 In the first stage technical proposals on conceptual design should be invited, subject to technical as well as commercial clarifications and adjustments.

28.3 In the second stage final technical proposals and priced bids should be invited.

## **29. COMMITTEE SYSTEM FOR COMPETITIVE BIDS**

29.1 A Committee System for competitive bids above a contract value of R1 Million (including of VAT) is hereby established, consisting of the following Committees for each Immovable Property transaction or cluster of transactions as the Municipal Manager may determine:

- (a) a bid specification committee;
- (b) a bid evaluation committee; and
- (c) a bid adjudication committee.

29.2 The Municipal Manager appoints the members of each committee, taking into account Section 117 of the MFMA.

29.3 A neutral or independent observer, appointed by the Municipal Manager, may attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

## **30. BID SPECIFICATIONS COMMITTEES**

30.1 Before placement of any invitations to perspective developers/bidders for the acquisition or disposal of Immovable Property, Property Rights a bid specification committee must compile the specifications for each such transaction.

30.2 Specifications-

- (a) must be drafted in an unbiased manner to allow all potential developers/bidders to make a bid/proposal;
- (b) must indicate each specific goal for which points may be awarded in terms of the points system set out in this policy. Such goals must be measurable and must be specified in the documentation accompanying the invitation to submit a bid. The measurable must clearly indicated how the bidder will be awarded a score out of the maximum points allocated; and
- (c) must be approved by the Municipal Manager prior to publication of the invitation for bids.

30.3 The Municipal Manager must appoint a bid specification committee when such a need arise. A specification committee must composed of one or more officials of the Municipality preferably *inter alia* the Manager responsible for Immovable Property Management, and may, when appropriate, include external specialist advisors.

30.4 No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

30.5 No Councillor may be a member of such a Bid Specification Committee.



### **31. BID EVALUATION COMMITTEE**

31.1 The function of a Bid Evaluation Committee involves the technical evaluation of the proposals submitted, including clarification interviews with short-listed proponents and the formulation of recommendations to the Bid Adjudication Committee in respect of the award of the tender or proposal call. The Bid Evaluation Committee will meet as often as is required, to complete a technical evaluation of the proposals in accordance with the set evaluation criteria and associated weighting. The scoring of the criteria will be by consensus, failing which the weighed average will apply.

Depending on the complexity of the proposal call, the evaluation process may involve other stages such as the short-listing of proponents for an interview with the Bid Evaluation Committee after initial scoring has been finalised. The purpose of this interview is for the Bid Evaluation Committee to obtain clarification on elements of a proposal, and/or confirmation of implied intentions.

31.2 A Bid Evaluation Committee must-

- (a) evaluate bids in accordance with the specifications and the points system set out in the Bid Document;
- (b) evaluate each bidder's ability to execute the contract from a technical, financial and commercial point of view;
- (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and
- (d) submit to the Adjudication Committee a report and recommendations regarding the award of the bid or any other related matter.

31.3 The Municipal Manager must appoint a Bid Evaluation Committee when the need arise. A Bid Evaluation Committee must as far as possible be composed of-

- (a) officials who was members of the Bid Specification Committee; and
- (b) at least one supply chain management practitioner of the Municipality.

31.4 The Municipal Manager may, at the request of a Bid Evaluation Committee authorize the appointment of an specialist advisor(s) to assist the Bid Evaluation Committee in the technical evaluation of the bids. Such advisor will not take part in the drafting of recommendations to the Bid Adjudication Committee, but will only advise the Bid Evaluation Committee on the technical evaluation of the bids.

31.5 No Councillor may be a member of such a Bid Specification Committee.

### **32. BID ADJUDICATION COMMITTEE**

32.1 A Bid Adjudication Committee must-

- (a) consider the report and recommendations of the Bid Evaluation Committee; and
- (b) either-
  - (i) depending on its delegations, make a final award, or a recommendation to the Municipal Manager to make the final award; or
  - (ii) make another recommendation to the Municipal Manager how to proceed with the relevant transaction.

- 32.2 The Municipal Manager must appoint a Bid Adjudication Committee when the need arise. A Bid Adjudication Committee must consist of at least four senior Managers of the Municipality, which must include-
- (a) the Chief Financial Officer or, if the Chief Financial Officer is not available, another Manager in the Budget and Treasury office reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer; and
  - (b) at least one senior supply chain management practitioner who is an official of the Municipality; and
  - (c) a technical expert in the relevant field who is an official, if such an expert exists.
- 32.3 The Municipal Manager must appoint the Chairperson of the Committee. If the Chairperson is absent from a meeting, the members of the Committee who are present must elect one of them to preside at the meeting.
- 32.4 Neither a member of Bid Evaluation Committee, nor an advisor or person assisting the Evaluation Committee, may be a member of a Bid Adjudication Committee.
- 32.5 If the Bid Adjudication Committee decides to award a bid other than the one recommended by the Bid Evaluation Committee, the Bid Adjudication Committee must, prior to awarding the bid notify the Municipal Manager.
- 32.6 The Municipal Manager may-
- (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee;
  - (ii) if the decision on the Bid Adjudication Committee is rejected, refer the decision of the Adjudication Committee back to that Committee for reconsideration.
- 32.7 The Municipal Manager may at any stage of a bidding process, refer any recommendation made by the Evaluation Committee or the Adjudication Committee back to that Committee for reconsideration of the recommendation.
- 32.8 No Councillor may be a member of a Bid Adjudication Committee.

## CHAPTER 7: PREFERENCE POINT SYSTEM

### 33. OBJECTIVES

33.1 Although municipalities are not obliged to implement a preference point system when disposing of Immovable Property or when awarding Property rights in Immovable Property, Stellenbosch Municipality is of the view that the achievement of equality is one of the fundamental goals to be attained. The objectives of the preferred points system are to:

- (a) promote broad-based black economic empowerment;
- (b) promote the redress of current, skewed land ownership patterns;
- (c) enhance the economy of the municipal area;
- (d) give preference to marginalised groups in the society, including women and people with disability;
- (e) give preference to people residing in the municipal area;
- (f) ensure that the most appropriate developments take place; and
- (g) further an integrated approach to development.

### 34. PUBLIC AUCTIONS

34.1 Council may determine, on a project-by-project basis, appropriate to the specific characteristics and attributes of the Immovable Property involved, limitations on categories of people who may take part in a public auction with the view of furthering the objectives as set out above, without excluding any category of people to take part in such public auction.

### 35. OUTRIGHT TENDER / CLOSED TENDER

35.1 For Immovable Property transactions with a contract value up to R1 Million, the awarding of tenders shall be adjudicated on a maximum one hundred (100) points system, set out as follows:

- (a) **Price:** Sixty (60) points maximum. The highest financial offer shall score sixty (60) points, with lower offers scoring proportionally in relation to the highest.
- (b) **Status:** Forty (40) points maximum, which shall be measured and compiled as follows:
  - (i) Twenty (20) points maximum for local black people and local legal entities owned by black people. Points for legal entities will be proportionally allocated according to the percentage ownership by black people.
  - (ii) Five (5) points maximum for local women and local legal entities owned by women. Points for legal entities will be proportionally allocated according to the percentage ownership by women.
  - (iii) Five (5) points maximum for local disabled people or legal entities owned by disabled people. Points for local legal entities will be proportionally allocated according to the percentage ownership by disabled people.

- (iv) Ten (10) points maximum for local residents or legal entities owned by local residents. Points for legal entities will be proportionally allocated according to the percentage ownership by disabled people
- 35.2 For Immovable Property transactions with a contract value above R1 Million up to R5 Million, the awarding of tenders shall be adjudicated on a maximum one hundred (100) points system, set out as follows:
- (a) **Price:** Eighty (80) points maximum. The highest financial offer shall score eighty (80) points, with lower offers scoring proportionally in relation to the highest.
  - (b) **Status:** Twenty (20) points maximum for local black people and local legal entities owned by black people. Points for legal entities will be proportionally allocated according to the percentage ownership by black people.
- 35.3 For Immovable Property transactions with a contract value above R5 Million, the awarding of tenders shall be adjudicated on a maximum one hundred (100) points system, set out as follows:
- (a) **Price:** Ninety (90) points maximum. The highest financial offer shall score ninety (90) points, with lower offers scoring proportionally in relation to the highest.
  - (b) **Status:** Ten (10) points maximum for black people and legal entities owned by black people. Points for legal entities will be proportionally allocated according to the percentage ownership by black people.

### 36. QUALIFIED TENDERS/PROPOSAL CALLS

- 36.1 Unless otherwise determined by Council for a specific transaction, the awarding of qualified tenders or proposal calls shall be adjudicated on a maximum one hundred (100) points system, set out as follows:
- (a) **Price:** Sixty (60) points maximum. The highest financial offer shall score sixty (60) points with lower offers scoring proportionally in relation to the highest offer.
  - (b) **Status:** Ten (10) points for local black people and local legal entities owned by black people. Points for legal entities will be proportionately allocated according to the percentage ownership by black people.
  - (c) **Development Concept:** Thirty (30) points maximum, which shall be measured and adjudicated as per criteria to be agreed upon for the specific project.

### 37. MODIFICATIONS

- 37.1 Modifications and/or additions appropriate to site-specific issues and the particular goals and objectives of the development will be made on a project-by-project basis.
- 37.2 Council may adjust the scoring system set out in this section for a specific Immovable Property or group of Immovable Properties to enable it to achieve specific targets or a specific outcome.

**38. NOTIFICATION OF PERFORMANCE POINT SYSTEM**

- 38.1 The Tender/Call for proposal document(s) must stipulate the preference point system which will be applied in the adjudication of the specific tender.

**39. EQUITY OWNERSHIP**

- 39.1 Equity Ownership is tied to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender.
- 39.2 Preference points may not be claimed in respect of individuals who are not actively involved in the management of an enterprise or business and who do not exercise control over an enterprise or business commensurate with the degree of ownership.
- 39.3 Equity claims for a Trust may only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the Trust.

**40. TENDERS MUST BE AWARDED TO THE BIDDER SCORING THE HIGHEST POINTS**

- 40.1 Tenders must be awarded to the bidder that scores the highest points in terms of the preference points system unless there are objective and reasonable criteria that justify the award of the tender to another tenderer.

**41. QUALIFYING CRITERIA/TWO STAGE BIDDING**

- 41.1 Criteria other than price, status and development concept, such as technical capability and environmentally sound practices, cannot be afforded points for evaluation. They can be specified in a call for tenders but they will serve as qualification criteria or entry level requirements, i.e a means to determine whether or not a specific tenderer is a complying tenderer in the sense of having submitted an acceptable tender. Only once a tender is regarded as a complying tenderer would it then stand in line for the allocation of points based on price, status and development concept.

## CHAPTER 8 CONTRACTUAL OBLIGATIONS

### 42. TERMS AND CONDITIONS OF SALE

- 42.1 Regulations 17 and 30 of the MATR sets out the minimum terms and conditions that needs to form part of Sales Agreements. The terms and conditions listed below is supplementary to the above.
- 42.2 All costs pertaining to a transaction, such as survey-, re-zoning-, sub-division-, consolidation-, advertisement- and relocation or provision of services cost shall be borne by an applicant, provided that Council may waive its right to claim those costs if the reason for the sale is to rid Council of a burden to maintain the Immovable Property or exercise control thereover.
- 42.3 Where applicable, existing services shall be secured by means of the registration of a servitude in favour of Council.
- 42.4 When Immovable Property is sold, development must commence where, applicable, within 1 (one) year or such longer period as may be agreed to from the date of transfer or possession or in accordance with the provisions of the deed of sale or the development programme submitted by the purchaser and be completed in accordance with the provisions of the deed of sale or the development programme. Council furthermore reserves the right to impose such conditions as deemed necessary, including a reversionary or penalty clause in the event that the development has not progressed as per the agreement, without limiting its rights to liquidated damage and reversionary clauses.
- 42.5 A reversionary clause must be inserted in the deed of sale if the Immovable Property is sold below market value or where the conditions of sale are not met.
- 42.6 Save the prior approval, the Immovable Property may only be used for the purpose as approved by Council and purpose regularized by Town Planning Schemes.
- 42.7 A suspensive condition clause shall be applicable to all transactions which are subject to the approval of a re-zoning, sub-division, consolidation etc.

### 43. TERMS AND CONDITIONS OF LEASE

- 43.1 Regulation 45 of the MATR sets out the minimum terms and conditions that needs to form part of Lease Agreements. The terms and conditions listed below is supplementary to the above.
- 43.2 All cost pertaining to a transaction such as legal-, survey-, re-zoning-, sub-division-, consolidations-, advertisement-, relocation or provision of services cost shall be borne by the applicant.
- 43.3 The following deposits shall apply to leases where the rental is based on market value-
- (a) a deposit equal to 2 months rental for commercial transactions;
  - (b) a deposit equal to 1 month's rental for residential and social services transactions.
  - (c) No deposit are payable in respect of encroachment agreements.

- 43.4 An owner of fixed Immovable Property who leases an adjoining municipal Immovable Property may be substituted by his successor in title for the duration of the remainder of the lease term on the same terms and conditions or additional terms and conditions as deemed necessary.
- 43.5 Lessees shall be liable for payment of rates and service charges, unless otherwise agreed upon.
- 43.6 The letting of lanes, public open spaces, road reserves shall be subject to the following:
- (a) closing off/securing to Council's satisfaction;
  - (b) costs for the relocation or installation of services, where required, shall be for the account of the lessee; and
  - (c) securing of servitudes.
- 43.7 Lessees shall indemnify Council against any possible claims arising from the lease or use of the Immovable Property.
- 43.8 No lessee of Immovable Property shall without the prior consent in writing of the Council, sublet such Immovable Property or any portion thereof or assign any right acquired by him in respect hereof and any such subletting or assignment without such consent shall be null and void.
- 43.9 Save with prior approval the Immovable Property may only be used for the purpose for which it was let and purposes regularized by town planning schemes.
- 43.10 Officials from Council shall at all reasonable times be entitled to enter/inspect the Immovable Property, having regards for the right to privacy as contemplated in Chapter 2 of the Constitution.
- 43.11 All agreements shall contain a clause which requires the lessee to maintain the leased Immovable Property.
- 43.12 All agreements shall contain a clause which requires that improvements provided by the lessee and which Council wishes to retain shall revert, free of charge, to Council once the lease period has terminated and/or in the event the agreement, due to breach of conditions by the lessee, has been cancelled. Provision must also be made on how to deal with such improvements should Council terminate the contract prior to the lapse of the lease period, where the lessee has not been in default.

## CHAPTER 9: FAIR MARKET VALUES/RENTALS

### 44. CRITERIA FOR DETERMINING COMPENSATION AND FAIR MARKET VALUES

- 44.1 Immovable Property may be Disposed of only at market-related prices, except when the plight of the poor or the public interest which impact on the economic and community value to be received by the Municipality demand otherwise.
- 44.2 If the Municipality, on account of the public interest, particularly in relation to the plight of the poor, intends to Dispose of a Non-Exempted Im m o v a b l e Property for less than market value it must take into account the following factors:
- (a) the interests of the State and the local community;
  - (b) the strategic and economic interests of the municipality, including the long-term effect of the decision on the municipality;
  - (c) the constitutional rights and legal interests of all affected parties;
  - (d) whether the interests of the parties to the transfer should carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and
  - (e) whether the local community would be better served if the capital asset is transferred at less than its fair market value, as opposed to a transfer of the asset at fair market value.
- 44.3 Subject to Council's Section 14 Determinations and an In Principle Approval in respect of a specific Disposal, the Municipality shall Dispose of social care Immovable Properties at a purchase price of between 10% and 60% of fair market value subject to a suitable reversionary clause being registered against the title deed of the Immovable Property. In the event of the subject Immovable Property ceasing to be used for the purpose originally intended, reversionary rights are triggered and the Municipality reserves the right to demand compensation equal to the difference between the actual purchase price and the current fair market value of the Immovable Property, or that the Immovable Property be transferred into the ownership of the Municipality at no cost to the Municipality.
- 44.4 If the Municipality appoints a private sector party or Organ of State through a competitive bidding process as the service provider of a Commercial Service, the compensation payable to the Municipality in respect of the Disposal of Immovable Property as an integral component of the performance of that Commercial Service to that service provider, shall reflect fair market value.
- 44.5 Fair market value of Immovable Properties will be calculated as the average of the valuations sourced from two service providers, unless determined otherwise by the Municipal Manager, taking into account the value of the property *vis-à-vis* the cost of obtaining such valuations.



**45. CRITERIA FOR DETERMINING OF FAIR MARKET RENTALS**

- 45.1 Immovable Property may only be let at market-related rates, except when the plight of the poor or the public interest which impact on the economic and community value to be received by the Municipality demand otherwise.
- 45.2 In respect of certain categories of Immovable Properties the Municipality shall be entitled to adopt below market-related tariffs in respect of Immovable Properties, leased to non-Profit Organisations, NGOs, Sporting Bodies, *bona fide* small farmers, ect. Such tariffs must form part of the municipality's tariff structure, approved from time to time.
- 45.3 The Municipality shall be entitled, in its sole discretion and from time to time, to specify the types of Immovable Property Transactions in respect of which applications are permitted to be made to the Municipality and to impose application fees, charges, rates, tariffs, scales of fees or other charges relating to the Immovable Property Transaction (collectively "**the Charges**").
- 45.4 In such circumstances, the Municipality shall also be entitled not to process the application for the Immovable Property Transaction unless the applicant has:
- a) confirmed in writing that it will pay the Charges and bear all such costs in respect of the I m m o v a b l e Property Transactions as the Municipality may require (for example legal costs, survey costs, costs of rezoning, subdivision, and consolidations, advertising costs, cost of relocation or cost of provision of services); and/or
  - b) if required by the Municipality, has paid a deposit as specified by the Municipality to cover such incidental costs.
- 45.5 The fair market rentals of individual Immovable Properties will be calculated as the average of the valuations sourced from two service providers, unless determined otherwise by the Municipal Manager, taking into account the estimated rental(s) *vis-à-vis* the cost of obtaining such valuations.

## CHAPTER 10 MISCELLANEOUS

### 46. MUNICIPAL LAND REGISTER (MLR)

- 46.1 The MLR is a computerized database that contains details of all municipal-owned Immovable Property.
- 46.2 The MLR database is electronically linked with the Geographical Information System of the Municipality to provide spatial information to complement the data stored in the MLR database.
- 46.3 As from date of commencement of this policy, all departments must record relevant details about their Master Infrastructure Plans and needs for Immovable Property in the MLR.
- 46.4 As a minimum requirement, sites for planned community infrastructure, municipal infrastructure, housing projects, ect must be recorded on the MLR.
- 46.5 All changes in the status of municipal-owned Immovable Properties must be recorded in the MLR.

### 47. STRATEGIC IMMOVABLE PROPERTY MANAGEMENT PLAN

- 47.1 As soon as possible after the approval of this policy Council must, as part of its strategic planning process, develop and adopt a Strategic Immovable Property Management Plan.
- 47.2 Such a Strategic Immovable Property Management Plan must consist of at least-
- (a) A strategic analysis of Council-owned Immovable Property portfolio (Land Audit), as well as state-owned Immovable Property within the municipal area.
  - (b) Categorisation of such Immovable Property-holdings, to include, but not limited to:-
    - (i) Immovable Property of strategic importance for, *inter alia*:-
      - (aa) housing purposes;
      - (bb) municipal infrastructure; and
      - (cc) public transport, -parking and related used
    - (ii) Immovable Property that should be retained for future generations;
    - (iii) Surplus Immovable Property, capable of being developed.
    - (iv) Immovable Property that should be acquired for strategic purpose.
    - (v) Immovable Property that should be exchanged for strategic purposes.
  - (c) A management plan for each category of Immovable Property.
  - (d) A performance assessment of each category of Immovable Property.
  - (e) The maintenance activities required for each category of Immovable Property.
- 47.3 The Strategic Immovable Property Management Plan must be developed within the context of approved spatial development frameworks, sectoral plans, planning related policies and regional plans.

- 47.4 When developing the SLMP, the public should be given ample opportunity to make inputs.
- 47.5 Council must annually revise its strategic Immovable Property Management Plan and must incorporate the revised plan into its IDP.

#### **48. FRAUD AND CORRUPTION**

- 48.1 Stellenbosch Municipality's policy is to require that bidders observe the highest standard of ethics during the selection and execution of contracts.
- 48.2 The Municipal Manager must reject a proposal for award if he/she determines that the person recommended for award, has engaged in corrupt or fraudulent activities in competing for the contract in question.
- 48.3 Where evidence in support of corrupt, fraudulent practices or criminal offences are reported and substantiated, the Municipal Manager is to initiate criminal proceedings against such business entity, official or other role player, and inform the Provincial Treasury and Council of such measures.
- 48.4 Employees found guilty after a disciplinary process of conniving with bidders or contravening this Policy may be dismissed.
- 48.5 Bidders and their directors who have been found guilty of abusing this Policy will be barred/suspended from doing business with the Municipality and National Treasury will be informed accordingly.
- 48.6 The Municipality reserves the right to criminally prosecute any person found to have violated or abused this Policy.
- 48.7 The Municipality reserves the right to cancel or not to award bids to bidders found to:
- a) have unfairly influenced the process of award and have been found guilty of improper conduct;
  - b) have been convicted of fraud or corruption during the past 5 years;
  - c) have willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - d) have been listed in the Registrar for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act No 12 of 2004.
- 48.8 All employees and/or officials are expected to assist the Municipality in fighting corruption and to this extent are encouraged to report all suspicious acts.

#### **49. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS TO OFFICIALS AND OTHER ROLE PLAYERS**

- 49.1 No person who is a tenderer or prospective tenderer for municipal Immovable Property may either directly or through a representative or intermediary promise, offer or grant -
- (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
  - (b) any reward, gift, favour or hospitality to any official of the Municipality or other role player who may affect the outcome of a tender process.
- 49.2 The Municipal Manager must promptly report any alleged contravention of Section 49(1) to Council.

**50. OBJECTIONS AND COMPLAINTS**

50.1 Persons aggrieved by decisions or actions taken in the implementation of this policy may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action to the Municipal Manager, or if the Municipal Manager is involved to the Executive Mayor.

**51. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES**

51.1 The Municipal Manager must appoint an independent and impartial person, not directly involved in the adjudication processes:-

- (a) to assist in the resolution of disputes between the municipality and other persons regarding-
  - (i) any decisions or actions taken in the implementation of this policy; or
  - (ii) any matter arising from a contract awarded in terms of the Policy; or
- (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matter arising from such contract.

51.2 The Municipal Manager or another official designated by the Municipal manager or Executive Mayor is responsible for assisting the appointed person to perform his or her functions effectively.

51.3 The person appointed must -

- (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
- (b) submit monthly reports to the Municipal Manager or the Executive Mayor as the case may be, on all disputes, objections, complaints or queries received, attended to or resolved.

51.4 This paragraph must not be read as affecting a person's rights to approach a court at any time.