

# DRAFT LAND ACQUISITION AND DISPOSAL POLICY

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## DIPALISENG LOCAL MUNICIPALITY

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<b>Date Approved:</b>	
<b>Effective Date:</b>	

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# 1. INTRODUCTION AND BACKGROUND

The Land Acquisition and Disposal Policy of the Municipality reflects the methodology and procedure for the sale and letting of various types of land parcels in Dipaliseng Local Municipality. This is to ensure equal economic opportunities in the Municipality for local investors, this Municipality will in all Land Disposal and Letting of land matters, consider giving preference of local Investors.

In recent history, it is quite evident that uniform and guided process and land use administration has been characterized by characterized by haphazard land use management. The process has been so chaotic such that it has left the system of disposing and letting of municipal land exposed to manipulation and corruption.

There is no guiding procedure as to how land is disposed and to whom may land be disposed. The maladministration in land administration is contributing to underdevelopment, particularly in closing the gap in housing market, urban development in the old township areas. This has also led to a situation where the Municipality has no updated asset register in terms of the exact land parcels owned by the Municipality, land claims and privately owned land. Development of the town has also been disadvantaged because land allocations have not been guided.

## 1.1. Objectives

The policy seeks to regulate land disposal process; establish norms and standards on land disposal and forms of land disposal. This would improve efficiency in land administration issues and clarity on the procedures to be followed.

# 2. KEY PRINCIPLES

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

The land acquisition and disposal policy should aim to –

- a) Redress past land ownership patterns to reflect the population demographics of the Municipality;
- b) Ensure an equitable, flexible and transparent Policy which enables the efficient performance of appropriate land transactions to serve the diverse needs of the Municipality's communities and its business units;
- c) Act in support of –

- i. Development of land, the local economy, provision of infrastructure and / or housing;
  - ii. Land use – Town planning scheme / land information systems;
  - iii. The interest of the public and plight of the poor;
  - iv. Rates systems;
  - v. Local Agenda 21 principles of sustainable development and environmental preservation.
- d) Stimulate economic development;  
To fulfil this aim, the Policy should –
- i. Be equitable;
  - ii. Be flexible (always in a process of development);
  - iii. Be efficient transactions to reduce bureaucracy;
  - iv. Ensure appropriate land transactions;
  - v. Serve the needs of the Municipality's Departments and Communities;
  - vi. Ensure compliance with all Environmental Legislation.

### **3. CORE PRINCIPLES**

- 1) Land disposal of any form and any size shall be a sole responsibility of Council and may NOT be delegated;
- 2) Land use administration matters that may be delegated to either the Standing Committee and the Mayoral Committee for decision is the processing of applications for rezoning, subdivision and special consents;
- 3) Land development shall be guided by the Spatial Development Framework (SDF) and Land Use Management Systems (LUMS);
- 4) Land sales to private individuals for any purpose shall be approved by Council ONLY;
- 5) South African Government Association (SALGA) resolution on municipal land disposal shall always be guiding any form of land disposal;
- 6) Residential sites shall be sold, particularly the free stand sites to the local people as a preference before any other person; however the purchase may not own any land at the time of the purchase;
- 7) Sites for business development should be first considered for a long term lease before opting for disposal;
- 8) Any site that is sold by the municipality must be developed over a period of three (3) years. Failure to develop might result in an exponential increase of property rates and a possible expropriation;
- 9) For residential sites, no sites may be sold at more than 1 500 m<sup>2</sup> to an individual or an organization / business not unless the development is going to be benefiting many people;
- 10) Business sites may not be sold to any individual if it is more than 2 000 m<sup>2</sup> ; however for shopping complex development the size of the site may depend on the development proposal which is subject to approval by Council;

- 11) Ensure an equitable, flexible transaction and transparent process of land administration and related transaction and thus improve efficiency;
- 12) Land disposal process shall also take into consideration the land markets in general though where land has to be disposed in favour of communities and not business, this consideration of market forces might be waived;
- 13) The process of land disposal shall also make due consideration and respect of the applicable legislation from other spheres of agreement, including the constitution.

#### **4. VALUE ISSUES**

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

- h) The Municipality in subscribing to affirmative action principles, must incorporate these principles in its Land Disposal Framework, to redress practices on the past

## **5. REQUIREMENTS OF THE MUNICIPAL FINANCE MANAGEMENT ACT**

### Section 14

- 1) *A Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.*
- 2) *A Municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in sub-section (1), but only after the Municipal Council, in a meeting open to the public –*
  - a) *Has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and*
  - b) *Has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.*
- 3) *A decision by a Municipal Council that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that asset has been sold, transferred or otherwise disposed of.*
- 4) *A Municipal Council may delegate to the Accounting Officer of the Municipality, its powers to make the determination referred to in sub-sections 2(a) and (b) in respect of movable assets below a value determined by the Council.*
- 5) *Any transfer of ownership of a capital asset in terms of sub-section (2) or (4) must be fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy which the Municipality must have and maintain in terms of Section 111.*
- 6) *This section does not apply to the transfer of a capital asset to another Municipality or to a Municipal entity or to a National or Provincial organ of State in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with a prescribed framework.*

## **6. PRECONDITIONS**

- 1) Ability to pay the selling price of lease rentals as per the prescripts of the lease agreement or the deed of sale.
- 2) Selling price or lease value is based on the valuation and market conditions at a given period.

- 3) Land must be available and be located at the correct land use area in terms of the land use scheme/s.
- 4) The municipality shall not be responsible for the costs of conveyancing, Town Planning and Survey or land sold all related costs shall be borne by the purchaser.
- 5) Once the land has been transferred, the property will be billed whether it is occupied by the owner or left vacant.
- 6) The Municipality will not be held liable for any vandalism of services on a site left vacant and unattended.
- 7) A fine to the satisfaction of Council will be served to property owners of sites disposed by Council that are left vacant and unattended posing any harm or danger to the environment or surrounding property owners.

## 7. SUPPLY CHAIN MANAGEMENT POLICY

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

### 7.1. Disposal Management

The disposal of capital assets must be dealt with in accordance with the provisions of the Section 14 of Municipal Finance Management Act (MFMA) (Act No. 56 of 2003). The Accounting Officer must establish a Land Disposal Committee to deal with the disposal of assets. All items for disposal must be authorised in terms of the MFMA.

### 7.2. Adjudication of Disposals

Adjudication of disposal will be conducted in terms of the Preferential Procurement Framework Act (PPFA) in favour of Human Development Index and the following formula will be applied until amended by subsequent legislation –

The 80/20 or 90/10 preference point system for the sale and letting of assets. The 80/20 formula applies to a value below **R500 000,00** and the 90/10 formula to values above **R500 000,00**.

$$Ps = 80/90 \quad 1 + \frac{Pt - Ph}{Ph}$$

Where –

Ps = Points scored from price of tender under consideration

Pt = Rand value of tender under consideration

Ph = Rand value of highest acceptable tender. It is also noted that 80 and 90 points in the case of an open tender, can be further divided into points for functionality and price. Tender documents must contain a detailed breakdown of the points that will be awarded for various criteria.

## **8. APPLICATION**

This Land Disposal Policy Framework, must be applied to all Municipal owned properties and must be complied with in every case where the disposal and letting of immovable assets is dealt with. All applications must e referred to in the first instance, to the **Land Disposal Committee** established in terms of Section (7) of this Disposal Policy.

## **9. METHODS OF DISPOSAL AND LETTING**

The disposal and letting of immovable property owned by Dipaliseng Municipality, will be conducted in accordance with one of the following described methods:

### **9.1. Sale of Letting by Public Auction / Tender / Proposal Call**

All sales of immovable assets should be at current Market Value except when the public interest or the plight of the poor demands otherwise. All transactions are subject to the tendering and adjudication guidelines, contained in this policy. Other than in exceptional circumstances presented before Council, all sales of immovable assets should be open Public Auction.

### **9.2. Donation “Gratis” Transfer**

The donation (“gratis” transfer) of any immovable asset to other organs of State or to CBOs, NGOs, NPOs, and Civil Society Organization, in furtherance of Socio-Economic and Environmental Objectives may be considered by the Council.

### **9.3. Letting**

The letting of immovable assets, should be at a market related rental except when the economic and / or community value or the plight of the poor demands otherwise. Section 14(2)(b) requires the Municipal Council to have regard to a fair market value of the assets which includes rentals.

An Agreement of Lease, should be concluded, clearly describing all salient details i.e. the parties, immovable asset(s), rental payable, conditions, duration and breach of the Lease Agreement.

A cession of a Lease does not fall within the requirements of Section 14 of the MFMA.

#### **9.4. Exchange**

The process of exchange means that a disposal and an acquisition is taking place simultaneously and therefore the rules of both must apply and usually occurs where one party approaches another to purchase an immovable asset and instead of a purchase price being agreed, the parties exchange ownership of their respective immovable assets.

Should one immovable asset be of a higher monetary value than the other, a cash payment equivalent to the shortfall (being the difference between the two values shall be made by the party whose asset is of lesser value.

#### **9.5. Public Private Partnership**

In the context of disposal, a PPP is a transaction between the Municipality and a private party.

A PPP agreement may only be entered following the compliance of Section 120 of the MFMA.

### **10. TRANSFER BETWEEN SPHERE OF GOVERNMENT**

Where the Council holds an immovable asset that is identified as essential for the furtherance of Socio-Economic objectives or owner occupation of sphere of government, transfer of such asset for this purpose shall, as much as possible, take preference over any other proposed disposal for which that asset may be earmarked. Such disposal shall be dealt with in terms of the requirements of the MFMA.

Transfer of immovable assets contemplated above shall be subject to a clearly defined reversionary clause, providing for a reversion of ownership to Dipaliseng Municipality, free of charge, in the event that the immovable asset is no longer to be used for the specified socio-economic purpose or owner occupation by a government department concerned.

### **11. UNCOLISITED BID**

11.1. A Supply Chain Management Policy must state that the Municipality or Municipal entity is in terms of Section 113 of the MFMA not obliged to consider unsolicited bids received outside a normal bidding process.

11.1.1. If a Municipality or Municipal entity decides in terms of Section 113(2) of the MFMA to consider an unsolicited bid, it may do so only if –

- a) The product or service offered in terms of the bid is demonstrably or proven unique innovative concept;
- b) The product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the Municipality or Municipal entity;
- c) The reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.

11.1.2. If a Municipality or Municipal entity decides to consider an unsolicited bid that complies with sub-regulation (2), the Municipality or Municipal entity must make its decision public in accordance with Section 21A of the Municipal Systems Act, together with – as

- a) Its reasons as to why the bid should not be open to other competitors;
- b) An explanation of the potential benefits for the Municipality or entity where it to accept the unsolicited bid; and
- c) An invitation to the public or other potential suppliers to submit their comments within 30 days of notice.

Once the Municipality or Municipal entity has received written comments pursuant to sub-section (3), it must submit such comments, including any responses from the unsolicited bidder, to the National Treasury and the relevant Provincial Treasury for comments.

The Adjudication Committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending of its delegations.

A meeting of the Adjudication Committee to consider an unsolicited bid must be open to the public.

11.1.3. When considering the matter, the Adjudication Committee must take into account –

- a) Any comments submitted by the Public; and
- b) Any written comments and recommendations of the National Treasury or the relevant Provincial Treasury

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

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

The requirements of the contents of this sections above, does not apply to unsolicited bids which are submitted in terms of Section below (special circumstances).

- 11.2. The Municipality acknowledges that in certain special circumstances property can be sold or let by Private Treaty. These special circumstances apply to the following categories of properties –
- a) Non-viable parcels of land may be let or sold to adjoining owners. The determination of non-viability rests with the Council and its decision will be final.
  - b) Viable properties in the case of business and industrial expansion and retention, may be let or sold to the adjoining owners at market related prices.
  - c) Properties identified for sale and hire to CBOs, NGOs, NPOs and Public Benefit Organizations, defined by the Income Tax Act and listed in schedule 9 of the Act.
  - d) Vacant industrial land.
  - e) Vacant land for the development of lower income housing in the categories of low cost, social and bank charter housing.
  - f) The sale of Municipal land, involving Black Economic Empowerment in partnership with foreign investors.
  - g) Municipal land for Community projects.
  - h) Land for worship purposes.
  - i) Municipal property for educational purposes other than private schools.
  - j) Municipal property for sale and hire to registered business cooperatives established in terms of the Department of Economic Development in Mpumalanga Province
  - k) The sale of Municipal owned property, subject to a long term registered lease, of ten years and longer, where the sale of the freehold right is of greater benefit to Council than the present value of the income flow from rental. This provision does not apply to Council owned property that is multi-tenanted. Such a sale must only take place after a proper cost benefit analysis has been undertaken. The analysis must include the following –
    - i. Current market value
    - ii. Replacement cost
    - iii. Income streams / cash flow analysis
    - iv. Economic life expectancy
    - v. BBBEE considerations
    - vi. Strategic importance
    - vii. Possible future use
    - viii. Current lease clauses

- l) Airport land for aviation purpose
- m) Previously disadvantaged areas identified by the Municipality, where the local economy is stagnant and remedial steps will require special treatment.

## **12. OFFICIALS AND POLITICAL OFFICE BEARERS**

Officials in the employment of the Municipality shall have the right to make an offer for acquisition of immovable assets being disposed of by the Municipality.

A political office-bearer or an official in the employment of the Municipality who, in his / her personal capacity, has direct or indirect interest in an immovable asset proposed for disposal, shall declare such interest. Failure to disclose such interest will result in such sale or lease being cancelled forthwith and the employee / office bearer held responsible for wasted costs.

An official in the employment of the Municipality shall not act as a member of a panel responsible for assessing and adjudicating tenders relating to the proposed disposal of his / her presence in such panel may potentially be deemed to be unfairly influential, discriminatory or in any manner contrary to the principles of this policy.

## **13. DISPOSAL OF RIGHTS IN IMMOVABLE ASSETS**

A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable asset. Servitudes results in a burden on the immovable asset for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset.

If the proposed servitude will result in the immovable asset being negatively affected, including the impairment of the ability to productivity enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude must not be granted.

Servitudes may be granted to any person (private or state organ) upon payment of appropriate market related compensation by such person provided that where another organ of state requires a servitude for the benefit of the general public and subject to the necessary authority having being obtained, the payment to the granting of the servitude, may be waived. The party requiring the servitude, is responsible for all costs relating to the granting and registration of the servitude.

## **14. GUIDELINES PERTAINING TO THE LETTING BY COUNCIL OF IMMOVABLE PROPERTY**

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

- m) Viable immovable property may be let by the Private Treaty in exceptional cases where the Council is of the opinion that Public competition would not serve a useful purpose or that it is in the interest of the Community and the Council. Council's reasons in each instance, must be recorded as part of its Resolution.
- n) Sport facilities and other public amenities may be let by Private Treaty to Sports Boards, Sports Federations and other similar bodies in accordance with Council's Policies on sports facilities and public amenities. Community based bodies and non-professional sporting bodies shall be charged the tariff rentals as approved by Council from time to time. Professional 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.
- o) Private Treaty letting of immovable property for outdoor seating to adjoining restaurant owners, is permitted subject to statutory requirements being complied with and a Professional Valuer determining the rental charged.
- p) Lease Contracts with existing tenants of immovable properties may be renegotiated where Council is of the opinion that public competition would not serve a useful purpose or that renewal is aligned with Council's strategic objectives and in the interest of the Community, subject to such renewal being advertised calling for public comment as described in Item 12 of this Policy. The existing tenants must give notice of the intention to renegotiate the lease at least six months before the date of termination.
- q) Improvements to Council's immovable property established by the Lessee and which Council wishes to retain shall revert to Council, free of compensation, at expiration or termination of the Lease. Where such improvements are not required by the Council, these shall be removed by the Lessee to the satisfaction of Council and all costs shall be borne by the Lessee.
- r) An owner of fixed immovable property who leases Council immovable property, may be substituted by a successor-in-title as deemed necessary on the same terms and conditions and / or additional terms and conditions.
- s) No application shall be processed unless the prescribed application fee as per tariff has been paid not 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 and Relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

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

- 15.1. Social care is defined as services provided by registered welfare, charitable, non-profit cultural and religious organizations and includes, but 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 Worshipers and the broader Community.

- b) Child care facility insofar as it contributes to the functioning of a multi-use childcare facility and is operated on a non-profit basis.
- c) Retirement villages for that portion of the building or facility available to general public use at subsidised / nominal prices.
- d) School or centres – utilised for the handicapped and disabled persons.
- e) Non-profit rehabilitation centres.
- f) Homeless / centres for indigents, battered or destitute persons.
- g) Organizations for the homeless and elderly.
- h) Youth activity centres.
- i) Facilities for the accommodation, care and burial of animals.
- j) Cemeteries, NPO funeral parlours and non-profit crematoria.

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

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

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

15.5. The following factors shall be considered relevant in the selection and allocation of immovable property to places of worship –

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

## **16. AMENDMENTS AND REVIEW OF POLICY**

The policy shall be reviewed annually and amended as and when there is a change in legislation.

## **17. COUNCIL APPROVAL AND EFFECTIVE DATE**

Draft policy requires Council adoption and notice of effect will be made by the Council.