

# **SOL PLAATJE MUNICIPALITY**



## **Policy on Land and other Immovable Capital Assets**

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## A. DEFINITIONS:

“**acquire**” in relation to land includes, but is not limited to acquisition by purchasing, expropriation, exchange, donation or leasing, or as a result of the conclusion of any farm of land availability agreement, and ‘acquisition’ has a corresponding meaning;

“**asset**” means a tangible resource capable of ownership;

“**Basic municipal service**” means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health, safety or the environment;

“**BBBEE**” in accordance with the Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003) means the economic empowerment 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 resource and skills development;
- (d) preferential procurement; and
- (e) investment in enterprises that are owned or managed by black people;

“**capital assets**” in terms of this policy, means land and other immovable capital assets which vests in the Municipality;

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

“**contract**” means a deed of alienation under which land is sold against payment by the purchaser to, or to any person on behalf of the seller;

“**Council**” means the Council of the Sol Plaatje Municipality as envisaged in chapter 3 of the Municipal Structures Act (Act No. 117 of 1998);

“**disposal**” in relation to a capital asset, includes –

- (a) the demolition, dismantling or destruction of the capital asset; or
- (b) any other process applied to a capital asset which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership;

“**exempted capital asset**” means a capital asset which is exempted by section (14)(6) or section 90(6) of the MFMA, that is, an asset that is needed for the provisions of basic municipal services.

**“fair market value”** in relation to a capital asset, means the value at which a knowledgeable willing buyer and a knowledgeable willing seller would sell the capital asset in an arm’s length transaction;

**“Granting of rights to use, control or manage”** means where the granting of such rights do not amount to the transfer or permanent disposal of an asset, for example when a right is acquired through a leasing, letting or hiring out arrangement;

**“high value”** in relation to a capital asset of the Municipality means that the fair market value of the capital asset exceeds any of the following amounts:

- (a) R50 million;
- (b) one per cent of the total value of the capital assets of the Municipality as determined from the latest available audited annual financial statements; or
- (c) an amount determined by resolution of the Council of the Municipality which is less than (a) or (b);

**“immovable capital asset”** means any immovable asset such as land, asset or building;

**“Integrated Development Plan (IDP)”** means the Integrated Development Plan of the Municipality as envisaged in section 25 of the Municipal Systems Act (Act No. 32 of 2000);

**“Historically Disadvantaged Individuals (HDI)”** in accordance with the Preferential Procurement Policy Framework Regulations (GN R725 of 10 August 2001), issued in terms Preferential Procurement Policy Framework Act (Act No. 5 of 2000), means a South African citizen-

- (a) who due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act no. 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (the “Interim Constitution”) and/or
- (b) who is a female; and/or
- (c) who has a disability;

provided that a person who obtained South African citizenship on or after the coming into effect of the Interim Constitution; is deemed not be an HDI;

**“LED Strategy”** means the Local Economic Development Strategy of the Municipality;

**“long term”** means a period of longer than three (3) years;

**“MFMA”** means the Municipal Finance Management Act (Act No. 56 of 2003);

**“Municipality”** means the Sol Plaatje Municipality as envisaged in chapter 1 of the Municipal Structures Act;

**“Municipal Manager”** means the Municipal Manager of the Municipality as envisaged in section 82 of the Municipal Structures Act;

**“Municipal Valuer”** means a person designated as a municipal valuer in terms of section 33 (1) of the Local Government: Property Rates Act (Act No. 6 of 2004);

**“non-exempted capital asset”** means a municipal capital asset which is not exempted by section 14(6) or section 90(6) from other provisions of the MFMA, that is, a capital asset that is not needed for the provision of basic municipal services.

**“social benefit”** is defined as services provided by registered welfare, charitable, non- profit and religious organisations.

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

**“Supply Chain Management Policy”** means the Supply Chain Management Policy of the Municipality as contemplated in chapter 11 of the MFMA and the Supply Chain Management Regulations (GNR 868 of 30 May 2005);

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

- This Policy must be read with the Supply Chain Management Policy of the Sol Plaatje Municipality and the Municipal Asset Transfer Regulations (R 878 of 22 August 2008) issued in terms of the MFMA.
- Words and expressions defined and used in this Policy have the same meaning as in the Municipal Asset Transfer Regulations (R878 of August 2008) unless otherwise stated.

**1. INTRODUCTION**

- 1.1 The Council has formulated this Policy to regulate its management and use of land and other immovable capital assets
- 1.2 Due to the need to redress spatial and historical economic disparities, issues of spatial integration and the empowerment of HDI's form a cornerstone of this Policy. This is consistent with the Municipality's strategic objectives which include realising spatial integration, affordable housing, sensitive and complementary economic development, as well as the strengthening of existing commercial nodes.
- 1.3 In accordance with its constitutional imperatives and obligations, the Council is required to inter alia, ensure that it acts on behalf of the public good and for the best interest of its citizens. In so doing, the Council must uphold principles of fairness and transparency.
- 1.4 In the exercise of its powers, duties and functions, the Council has the right to acquire and dispose of land and other immovable capital assets.
- 1.5 The Council is the custodian of the Policy on Land and Other Immovable Capital Assets.

**2. PURPOSE OF THE POLICY**

2.1 The purpose of this policy is to:

- (a) Provide a policy framework for the management of the Council's capital assets in accordance with the Municipality's Supply Chain Management Policy.
- (b) Promote the acquisition of land, asset ownership and development by historically disadvantaged individuals as envisaged in section 25(5) of the Constitution.
- (c) Regulate the use, acquisition and disposal of land and other immovable capital assets in accordance with the Regulations.
- (d) Ensure that land and other immovable capital assets held by it, which are not envisaged for or already used for public purposes and/or in the public's interest, be dealt with in a manner that will ensure the greatest benefit to the Council and the community.

**3. LEGISLATIVE FRAMEWORK**

- Broad Based Black Economic Empowerment Act (Act No. 53 of 2003);
- Constitution of the Republic of South Africa, 1996;
- Development Facilitation Act (Act No. 67 of 1995);
- Extension of Security of Tenure Act ( Act No. 62 of 1997);
- Local Government: Municipal Finance Management Act (Act No. 56 of 2003): Municipal Supply Chain Management Policy Regulations (General Notice 868 in GG 27636);
- Local Government: Municipal Finance Management Act (2003): Municipal Asset Transfer Regulations (GN R878 in GG 31346 of 2008)(hereafter referred to as the Regulations);
- Local Government: Municipal Structures Act (Act No. 117 of 1998);
- Local Government: Municipal Systems Act (Act No. 32 of 2000);
- Local Government: Municipal Finance Management Act (Act No. 56 of 2003)(referred to hereafter as the MFMA);
- Preferential Procurement Policy Framework Act (Act No. 5 of 2000);
- Preferential Procurement Policy Framework Regulations (GN R725 of 10 August 2001) issued in terms of the Preferential Procurement Policy Framework (Act No. 5 of 2000);
- Property Rates Act (Act No. 6 of 2004);
- The Northern Cape Planning and Development Act (Act No. 7 of 1998).

**4. POLICY PRINCIPLES**

- 4.1 Utilization of land and other immovable assets is guided by the Municipality' Integrated Development Plan (IDP), the Spatial Development Framework and the Asset Management Strategy.
- 4.2 Council may acquire, use or dispose of any capital assets owned by the Municipality, unless it is precluded from so doing by law or the conditions under which such immovable assets were acquired by the Municipality.
- 4.3 The disposal of land and other immovable capital assets is subject to the following:
- (a) Preference for the disposal of land and other immovable capital assets will be given to HDI's, i.e. designated groups: youth, women and people with disabilities, in accordance with the Supply Chain Management Policy of the Municipality;
  - (b) An annual target of 60% for disposal of municipal land (particularly industrial and commercial) will be biased towards the HDI's. This is applicable in terms of both quantity (including size) and the value of land acquisition and alienation. This is subject to the following conditions:
    - (i) Any disposal of municipal capital assets shall not unfairly discriminate against individuals not defined as HDIs.
    - (ii) In a bid for municipal land or other immovable capital assets, where bidders are equally competitive; preference will be given to HDIs, in accordance with the Supply Chain Management Policy of the Municipality.
    - (iii) Special affirmative measures towards HDI's may be applied by the Municipality to ensure fairness in the disposal process of land or other immovable capital assets in accordance with the Preferential Procurement Regulations.

- (c) Preference will be given to bids that support economic development initiatives on a macro scale, including tourism initiatives;
  - (d) Land for residential purposes will be alienated, whilst land for non-residential purposes such as commercial and industrial erven may be leased or sold at the discretion of the council;
  - (e) Land may be disposed of as collateral for major development investment in pursuance of Public-Private Partnerships (PPPs) as envisaged in section 120 of the MFMA;
  - (f) Council will set aside some parcels of land to be utilized at its own discretion, and the rest may be alienated to the public;
  - (g) Council reserves the right not to dispose of any portion of land.
- 4.4 The implementation of these policy principles will be used to enhance and not stifle economic development.
- 4.5 The Council may dispose of land or other immovable capital assets only once it is satisfied that such an asset is not needed to provide the minimum level of basic municipal service, in accordance with section 14(1)(a) of the MFMA and Council has complied with subsections (2) to (6) thereof.
- 4.6 A decision by the 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.
- 4.7 Council reserves the right to limit the number of acquisitions per bidder in the disposal process.
- 4.8 Unless otherwise expressly provided for in any other law and whereas, various legislation provide for the disposal of land at market related prices, land or other immovable capital assets can only be disposed of at less than the market related value, subject to approval by Council upon consideration of the following factors:

- (a) Whether the immovable capital asset is surplus to requirements and may not be needed for its own requirements at a later date;
  - (b) The envisaged purpose or use of the capital capital assets;
  - (c) Current market value (details of how arrived at) and the value to be received in exchange for the disposal;
  - (d) Comparison of disposal methods;
  - (e) Examination of costs and benefits of each disposal method and
  - (f) If disposal is envisaged by way of an offer to purchase, all documentation (including minutes of meeting/s held) pertaining to said offer must be submitted to Council prior to conclusion of such an offer.
- 4.9 Should Council consider it desirable not to accept the highest bid or decide to accept a particular development proposal in which the amount of the bid is not the highest offer, the reasons for this decision must be fully set out and recorded in the minutes of the Council meeting in question. Such a decision must be consistent with paragraph 13(2) of the Regulations.
- 4.10 In assessing bids, Council may take cognizance of the total cash and developmental value of the packages offered by the bidders where such packages are permissible in terms of the conditions of the bid
- 4.11 The Municipality may elect to link the sale or development of land within a single transaction to the development of municipal infrastructure or any other public infrastructure.
- 4.12 The Municipality's designated valuer must determine rentals unless circumstances warrant the use of an independent valuer.
- 4.13 Closed streets, lanes and public open spaces may be sold or let to adjoining owners, provided that written notice has been served on all adjoining owners.

- 4.14 The selling price for the out-of-hand sale of closed streets, lanes and odd pieces of land to adjoining owners shall be sold at nominal value unless otherwise determined by the Municipality's designated valuer.
- 4.15 Streets, lanes and public open spaces which are regarded as a burden to Council shall be leased to adjacent owners at full market value.
- 4.16 Restrictive title conditions may only be cancelled in cases where the applicable conditions which are in favour of Council are registered and where the parties affected are only the Council and the asset owner concerned and on condition that Council satisfies itself that no other person will be prejudiced.

5. **METHODS OF DISPOSAL OF IMMOVABLE CAPITAL ASSETS**

- 5.1 After consideration of the availability of land for disposal as guided by the (IDP), Spatial Development Framework (SDF) and the Asset Management Strategy, the Council must make the determination that such an asset is not needed to provide a minimum level of service delivery in accordance with paragraph 4.5 of this Policy.
- 5.2 Any disposal of capital assets shall be subject to a public participation process envisaged in paragraph 8 of this Policy. Such a public participation process shall not be conditional on the value of the capital assets despite the provision of paragraph 5(2) of the Regulations.
- 5.3 The Municipality may grant a right to use, control or manage a capital asset (i.e a leasing, renting or hiring out arrangement) only after the Accounting Officer has conducted a public participation process; this will be applicable regardless of the value of the capital asset, as provided for in paragraph 34(2) of the Regulations.
- 5.4 Upon conclusion of the public participation process the Council may approve in principle that a capital asset may be disposed of, in accordance with conditions provided for in paragraphs 9 and 18.10 of this Policy.

- 5.5 Such a public participation process shall include notification that an applicant intends purchasing or leasing a capital asset. Where there is more than one applicant, the Municipality must initiate a bidding process as laid out in the Municipality's Supply Chain Management Policy.
- 5.6 If there are no objections, the Council may approve in principle that an out-of-hand disposal may be concluded.
- 5.7 Accordingly, the Council may include conditions specifying a framework within which direct negotiations for the transfer or disposal of the capital asset must be conducted with another person, if transfer or disposal is subject to direct negotiations.
- 5.8 The floor price or minimum compensation for the asset must be determined by the municipal valuer who should certify that it corresponds with a reasonable market value.
- 5.9 The Municipality reserves the right to prescribe that not more than one erf may be disposed out-of-hand to any single purchaser.
- 5.10 Capital assets may be sold on a first-refusal basis to existing tenants who have leased such premises for five years or longer on condition that the immovable asset is sold at market value unless otherwise provided for in relevant legislation.
- 5.11 Capital assets may be sold or leased out-of-hand in exceptional cases where Council is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community
- 5.12 In such cases Council is required to record in the minutes of the Council meeting concerned stating their full reasons for preferring such out-of-hand disposal to those by public competition.
- 5.13 Such disposal of capital assets must not be in conflict with any other relevant legal requirements such as town planning requirements or conditions of title.

- 5.14 Capital assets acquired by the Council for public purposes or in the public interest may be leased out-of-hand to any applicant for temporary use until such time as the asset is required for development.

6. **PROCEEDS OF THE DISPOSAL OF CAPITAL ASSETS**

- 6.1 The Municipality must provide for a 30% allocation from the proceeds of immovable capital assets, in its annual budget allocation, for the servicing of erven. i.e the construction of streets and the provision of storm water drainage, water, electricity and sewerage and such expenditure is included in the selling price of the land. This provision must preferably reflect in the budget assumptions when the annual budget is tabled.

- 6.2 Such a budgeted allocation derived from the proceeds of the disposal of immovable capital assets must be used as a funding mechanism for capital projects, including the servicing of municipal erven. This must be factored into the annual budget and the IDP.

7. **TRANSFER OF NON-EXEMPTED CAPITAL ASSETS: DECISION-MAKING PROCESS:**

- 7.1 The Municipality may dispose of a capital asset only after the Municipal Manager, has conducted a public participation process, subject to the Council having made the determination that:
- (a) such a capital asset is not needed to provide the minimum level of basic municipal services;
  - (b) fair market value of the asset and the economic and community value to be received in exchange for the asset has been considered; and
  - (c) as consequence of (a) and (b), had approved in principle that the capital asset may be transferred or disposed of.

- 7.2 The public participation process envisaged in section 7.1 must be complied with regardless of the value of the capital asset. This is consistent with the Municipality's adherence to principles of good governance.
- 7.3 A request to Council to authorize the public participation process must be accompanied by an information statement stating:
- (a) the valuation of the capital asset to be transferred or disposed of and the method used to determine that valuation;
  - (b) the reasons for the proposal to transfer or dispose of the capital asset;
  - (c) any expected benefits to the Municipality that may result from the transfer or disposal;
  - (d) any expected proceeds to be received by the Municipality from the transfer or disposal; and
  - (e) any expected gain or loss that will be realised or incurred by the Municipality arising from the transfer or disposal.

## **8. PUBLIC PARTICIPATION PROCESS**

- 8.1 If the Council has authorized the Accounting Officer to conduct a public participation process, the Accounting Officer must at least 60 days before the council meeting at which determinations referred to in section 7.1 (a) and (b) of this Policy are to be considered in accordance with section 21A of the Municipal Systems Act:
- (a) advertise in a local or other newspapers the proposal to transfer or dispose of the capital asset together with the information statement in accordance with 7.3 of this Policy;
  - (b) invite the local community and other interested persons to submit comments or representations in respect of the proposed transfer or disposal of the capital asset; and
  - (c) solicit the views and recommendations of National Treasury and the relevant provincial treasury on the matter (this is applicable only if the immovable capital is of high value) .

9. **CONSIDERATION TO TRANSFER OR DISPOSE OF NON-EXEMPTED CAPITAL ASSETS**

9.1 The Council must, when considering any proposed transfer or disposal of a non-exempted capital asset, take into account –

- (a) whether the capital asset may be required for the Municipality's own use at a later date;
- (b) the expected loss or gain that is expected to result from the proposed transfer or disposal
- (c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the Municipality;
- (d) the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the Municipality's interests;
- (e) the effect that the proposed transfer or disposal will have on the rating of the Municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
- (f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
- (g) the estimated cost of the proposed transfer or disposal;
- (h) the transfer of any liabilities and reserve funds associated with the capital asset;
- (i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;
- (j) any written views and recommendations on the proposed transfer or disposal of by National Treasury and the relevant provincial treasury;
- (k) the interests of the affected organ of state, the Municipality's own strategic, legal and economic interests and the interests of the local community; and
- (l) compliance with the legislative regime applicable to the proposed transfer or disposal.

10. **CONDITIONAL APPROVAL OF TRANSFER OR DISPOSAL OF NON-EXEMPTED CAPITAL ASSETS**

10.1 An approval in principle in terms of paragraph 5(1)(b)(ii) of the Regulations and paragraph 7.1 (c) of this Policy, that a non-exempted capital asset may be transferred or disposed of, may be given subject to any conditions, including conditions specifying:

- (a) the way in which the capital asset is to be sold or disposed of;
- (b) a floor price or minimum compensation for the capital asset;
- (c) whether the capital asset may be transferred or disposed of for less than its fair market value, in which case the Council must first consider the criteria set out in paragraph 12 of this Policy.
- (d) a framework within which direct negotiations for the transfer or disposal of the capital assets must be conducted with another person, if transfer or disposal is subject to direct negotiations.

11. **TRANSFER OR DISPOSAL OF NON-EXEMPTED CAPITAL ASSETS IN ACCORDANCE WITH DISPOSAL MANAGEMENT SYSTEM**

11.1 If approval has been given in terms 5(1)(b)(ii) of the Regulations that a non-exempted capital asset may be transferred or disposed of, the Municipality may transfer or dispose of the asset only in accordance with its disposal management system irrespective of:

- (a) the value of the capital asset; or
- (b) whether the capital asset is to be transferred to a private sector party or an organ of state.

11.2 The disposal management system of a Municipality does not apply to the transfer of a non-exempted capital asset if -

- (a) the Municipality:
  - (i) reviews in terms of chapter 8 of the Municipal Systems Act its service delivery mechanisms for the performance of a municipal service;

- (ii) appoints a private sector party through a competitive bidding process as the service provider for the performance of that municipal service; and
    - (iii) transfers the capital asset as an integral component of the performance of that municipal service to that service provider; or
  - (b) the Municipality:
    - (i) appoints a private sector party or organ of state through a competitive bidding process as the service provider for the performance of that commercial service; and
    - (ii) transfers the capital asset as an integral component of the performance of that commercial service to that service provider; or
- 11.3 The Municipality may negotiate directly with the selected service provider regarding the transfer of the capital asset.
- 11.4 The Municipality may not commence with negotiations referred to in 11.3, unless approval in principle has been given that the relevant capital asset may be transferred or disposed of, in terms of paragraph 10 of this Policy.
- 11.5 In applying the process referred to in section 11.1 or conducting negotiations referred to in 11.3, the Municipality must consider the gain or loss that will:
- (a) result from the transfer or the disposal of the relevant capital asset;
  - (b) be recorded in the accounting records of the Municipality.

**12. COMPENSATION FOR TRANSFER OF NON-EXEMPTED CAPITAL ASSETS**

- 12.1 The compensation payable to the Municipality for the transfer of a non-exempted capital asset must, subject to 12.2, –
- (a) be consistent with criteria applicable for compensation set out in the disposal management system of the Municipality;
  - (b) reflect fair market value.

- 12.2 If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted immovable capital asset for less than its fair market value, the Municipality must, when considering the proposed transfer, take into account –
- (a) the interests of
    - (i) the State; and
    - (ii) 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.

**13. CIRCUMSTANCES IN WHICH THE TRANSFER OF MUNICIPAL CAPITAL ASSETS TO ORGANS OF STATE IS EXEMPTED FROM SECTIONS 14 AND 90 OF THE MFMA**

- 13.1 Section 14(1) to (5) and section 90(1) to (5) of the MFMA do not apply if the Municipality transfers a capital asset to an organ of state in any of the following circumstances:
- (a) when transfer of a capital asset emanates from a review by a Municipality of its service delivery mechanisms for the performance of a municipal service in terms of chapter 8 of the Municipal Systems Act and the Municipality appoints another organ of state as the preferred option for the performance of the service;
  - (b) when transfer of a capital asset emanates from a reorganisation of powers and functions between a parent Municipality and its municipal entity, including asset transfers contemplated in section 84 of the MFMA;

- (c) when transfer of a capital asset emanates from an assignment of any of the powers or functions of the Municipality to another organ of state by national legislation or in terms of a power contained in national legislation, including an assignment of powers or functions following -
    - (i) an adjustment of the division of powers and functions between the district Municipality and local municipalities within the district in terms of section 85 of the Municipal Structures Act;
    - (ii) an authorisation in terms of section 84(3) of the Municipal Structures Act; or
    - (iii) a re-demarcation of municipal boundaries in terms of the Municipal Structures Act
  - (d) when municipal housing or land is transferred to a national or provincial organ of state for housing for the poor or in terms of a national or provincial housing policy;
  - (e) when transfer of a capital asset to an organ of state is required or permitted in terms of national legislation and that legislation determines the conditions of the transfer; or
  - (f) any other circumstance not provided in paragraph (a) to (e), provided that -
    - (i) the capital asset to be transferred as determined by a resolution of Council is not needed for the provision of the minimum level of basic municipal services and is surplus to the requirements of the Municipality; and
    - (ii) if the capital asset is to be transferred for less than fair market value the Municipality must take into account factors provided for in paragraph 20(1)(f)(ii)(aa) to (jj) of the Regulations.
- 13.2 Any transfer of a capital asset to an organ of state may be effected only in accordance with circumstances described in chapter 3(20) of the Regulations and any other legislation specifically regulating the transfer of assets, but in the event of any inconsistency between a provision of chapter 3 of the Regulations and such other legislation, that other legislation prevails.

**14. CIRCUMSTANCES IN WHICH TRANSFER OF MUNICIPAL CAPITAL ASSETS TO ORGANS OF STATE IS NOT EXEMPTED**

14.1 Sections 14(1) to (5) and 90(1) to (5) of the MFMA and chapter 2 of these Regulations must be applied if the Municipality transfers a capital asset to an organ of state when none of the circumstances mentioned in regulation 20 apply, including when the asset is transferred in the course of an ordinary commercial transaction between the Municipality and the organ of state.

**15. TRANSFER OF EXEMPTED CAPITAL ASSETS NEEDED TO PROVIDE MINIMUM LEVEL OF BASIC MUNICIPAL SERVICE**

15.1. If the Municipality transfers to an organ of state an exempted capital asset needed to provide the minimum level of basic municipal services, such transfer may only be effected on condition that -

- (a) ownership in the capital asset must immediately revert to the Municipality should the organ of state for any reason cease to render the service or is unable to render the service; and
- (b) the organ of state may not without the written approval of the Municipality -
  - (i) transfer the capital asset to another person;
  - (ii) dispose of the capital asset;
  - (iii) grant a right to another person to use, control or manage the capital asset; or
  - (iv) encumber the capital asset in any way.

15.2 Before transferring an exempted capital asset needed to provide the minimum level of basic municipal services, the Municipality must be satisfied that the organ of state to which the asset is to be transferred can demonstrate the ability to adequately maintain and safeguard the asset.

- 15.3 The transfer agreement, service delivery or other agreement between the Municipality and the organ of state to whom the asset is to be transferred must reflect the conditions set out in sub-paragraph 15.1 of this Policy.
- 15.4 If the organ of state replaces, upgrades or improves the capital asset transferred to it, the conditions set out in sub-paragraph 15.1 remain applicable to the new, upgraded or improved capital asset as if it were the original capital asset.
- 15.5 This Policy does not apply to a capital asset needed to provide the minimum level of basic municipal services which is transferred to an organ of state in the circumstances referred to in paragraphs 20(1)(c) or (d) of the Regulations.

16. **TRANSFER OF BORROWINGS AND STAFF**

- 16.1. If the Municipality transfers an exempted capital asset to an organ of state, any borrowings or other amounts owed by the Municipality specifically associated with the asset being transferred, or with its acquisition, operation or maintenance, must also be transferred to the organ of state. This must be applied in addition to paragraphs 26(2) to (7) of the Regulations.
- 16.2 If the Municipality transfers an exempted capital asset to an organ of state and the transfer of that asset gives rise to the transfer to the organ of state of staff associated with the asset; the staff transfer must be consistent with legislation regulating staff transfers in those circumstances, including any applicable labour legislation and legislation regulating the transfer of liabilities associated with such staff.

17. **COMPENSATION AND OTHER MATTERS RELATING TO THE TRANSFER OF CAPITAL ASSETS**
- 17.1 The Municipality must receive compensation for the value of those assets when transferring an exempted capital asset and any subsidiary assets to an organ of state, as may be agreed upon with the organ of state.
- 17.2 The value of an asset must, for purposes of sub-paragraph 17.1 be determined in accordance with the valuation of assets in terms of paragraph 29 of the Regulations.
- 17.3 Such transfer of assets must be made in accordance with paragraph 30 of the Regulations which provide that a Municipality may transfer assets and liabilities to an organ of state only in accordance with a written transfer agreement concluded between the Municipality and the organ of state. Such a transfer agreement must be made in terms of paragraphs 30(2) to (3) of the Regulations.
- 17.4 Before entering into a transfer agreement in terms of paragraph 30 of the Regulations, the Municipality must consider the effect that the transfer of an asset will have on -
- (a) its credit rating and ability to raise long-term or short-term funds in the future; and
  - (b) its financial position and cash flow.
- 17.5 Paragraph 17.4 does not apply if the asset is transferred to an organ of state in the circumstances referred to in paragraphs 20(1)(c), (d) or (e) of the Regulations.
- 17.6 Before entering into a transfer agreement in terms of paragraph 30 of the Regulations, the organ of state to whom a capital asset is to be transferred must undertake and document a due diligence review on the asset and any liabilities transferred to it and the results of the due diligence must be taken into account in any decision to transfer a capital asset in terms of chapter 3 of the Regulations.

**18. GRANTING OF RIGHTS TO USE, CONTROL OR MANAGE  
MUNICIPAL CAPITAL ASSETS**

- 18.1 The Municipality shall regulate the granting of rights to use, control or manage immovable capital assets. This is applicable where the granting of such rights does not amount to the transfer or permanent disposal of the immovable capital asset, for example when a right is acquired through leasing, letting or hiring out arrangement.
- 18.2 The granting of such rights by the Municipality does not apply with regard to the granting of:
- (a) rights to use, control or manage capital assets in terms of public-private partnership agreements referred to in section 120 of the MFMA and the Municipal Public-Private Partnership Regulations published by the Government Notice No. R309 of 2005; or
  - (b) rights on municipal land to housing for the poor to beneficiaries of such housing.
- 18.3 The granting by the Municipality of a right to use, control or manage a capital asset must be dealt with in terms of chapter 2 or 3 of the Regulations as if the granting of a right is a transfer within the meaning of those chapters, if the right:
- (a) is granted for an indefinite or undetermined period;
  - (b) is granted for a period which exceeds:
    - (i) the useful life of the capital asset; or
    - (ii) the economic usefulness of the capital asset and which would required the asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period which the rights is granted;
  - (c) confers on the person to whom the right is granted:
    - (i) an option to buy or acquire ownership in the capital asset; or
    - (ii) the power to use, control or manage the capital asset as if that person is the beneficial (but not legal) owner of the asset.

- 18.4 The Municipality may grant a right to use, control or manage an immovable capital asset only after:
- (a) The Accounting Officer has conducted a public participation process regarding the proposed granting of the rights in terms of paragraph 35 of the Regulations,; and
  - (b) The Council has approved in principle that the right may be granted;
- 18.5 The public participation process envisaged in sub-paragraph 18.4 (a) above, must be complied with regardless of the value of the capital asset and the period to be granted for such rights.
- 18.6 Only the Council may authorize the public participation process referred to in paragraph 18.4(a) of this Policy.
- 18.7 A request to the Council for authorisation of a public participation process must be accompanied by an information statement stating:-
- (a) the reasons for the proposal to grant a right to use, control or manage the relevant capital asset;
  - (b) any expected benefits to the Municipality that may result from the granting of the right;
  - (c) any expected proceeds to be received by the Municipality from the granting of the right; and
  - (d) any expected gain or loss that will be realised or incurred by the Municipality arising from the granting of the right.
- 18.8 The Council may delegate to the Accounting Officer its approval power referred to in 18.4(b) of this Policy in accordance with paragraph 34(1)(b) of the Regulations, excluding the power to grant long term rights to use, control or manage capital assets of a value in excess of R10 million.
- 18.9 If the Council authorized the Accounting Officer to conduct a public participation process in connection with any proposed granting of a long-term right to use, control or manage a capital asset, regardless of the value of such an asset, the Accounting Officer must at least 60 days before the meeting of the

Council conduct a public participation process as provided for in paragraph 18.4 above.

- 18.10 The Council must, when considering any approval in principle in terms of paragraph 34(1)(b) for any proposed granting of a right to use, control or manage a capital asset, take into accounting factors referred to in section 36(a) to (g) of the Regulations.
- 18.11 Conditional approval in principle for the granting of rights to use, control or manage an immovable capital asset may be given subject to conditions stipulated in paragraph 40(a) to (c) of the Regulations.
- 18.12 If approval in principle has been given in terms of paragraph 18.10 above, that a right to use, control or manage an immovable capital asset may be granted, such a right may be granted only in accordance with the disposal management system of the Municipality, except under conditions envisaged in paragraph 41(1) to (4) of the Regulations.
- 18.13 If the Municipality grants a right to use, control or manage a capital asset used for in connection with a municipal service, the Municipality must take all reasonable steps to ensure that the granting of the right will result in the continuation of the service at the same or better level than would otherwise have been rendered by the Municipality had it not been granted.
- 18.14 The granting of rights to use, control or manage capital assets needed to provide minimum level of basic municipal services to any private sector party or organ of state must be in accordance with the conditions provided for in paragraph 44 of the Regulations.
- 18.15 The Municipality may grant a right to use, control or manage a capital asset to a private sector party or organ of state by way of a written agreement concluded between the Municipality and the private sector party or organ of state to whom the right is granted in accordance with paragraph 45 of the Regulations.

- 18.16 An agreement granting a right to use, control or manage a capital asset to a private sector party or organ of state:
- (a) must be made available in its entirety to the Council of the Municipality; and
  - (b) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to information Act, 2000 (Act No. 2 of 2000).
- 18.17 Any gain that will be realised or any loss and all associated costs that will be incurred by the Municipality in respect of the transfer or disposal of, or the granting of a right to use, control or manage a capital asset, must be included in the next adjustments budget of the Municipality referred to in section 28 and 87 of the MFMA, respectively.
- 18.18 The transfer of an asset, or the granting of a right to use, control or manage an asset in terms of the Regulations does not affect any encumbrances, rights and servitudes attached to the asset.
- 18.19 The transfer or disposal of an asset or the granting of a right to use, control or manage an asset in terms of the Regulations must be given effect to and formalized in accordance with any legislation applicable to such transfers, disposals or granting of rights.
- 18.20 Exemptions with regard to the application of the Regulations must be in accordance with paragraph 50 of the Regulations.

**19. ACQUISITION OF LAND AND OTHER IMMOVABLE CAPITAL ASSETS**

- 19.1 In an event when there is a need to acquire additional land for development related activities, the Municipality will embark on a land acquisition programme in collaboration with the Department of Land Affairs.

- 19.2 The Municipality may acquire additional land and other immovable capital assets only after the Council has made the determination that:
- (a) such a capital asset is needed to provide the minimum level of basic municipal services;
  - (b) fair market value of the asset and the economic and community value to be received in exchange for the asset has been considered (where applicable); and
  - (c) it is in the strategic and economic interest of the Municipality including its long-term requirements;
  - (d) as consequence of (a), (b) and (c), had approved in principle that the capital asset may be acquired.
- 19.3 The land and other immovable capital assets acquired in terms of subparagraph 19.1 must be registered in the name of the “*Sol Plaatje Municipality*”.

**20. DISPOSAL COMMITTEE**

- 20.1 The Municipal Manager shall appoint an Asset Disposal Management Committee whose primary function shall be:
- (a) to advise the Municipal Manager on all matters relating to the acquisition, maintenance or disposal of land and other immovable capital assets;
  - (b) advise the committees of council on the acquisition, maintenance and disposal of land and other immovable capital assets and make recommendations to council on such matters in accordance with the Integrated Development Plan (IDP), the SDF and the Asset Management Strategy;
  - (c) ensure that a *Register of Land and Other Immovable Capital Assets* is developed and regularly updated;
  - (d) ensure that a monitoring and evaluation system is established to realize the policy principles, objectives and set targets of this policy;

- (e) conduct surveys of current undeveloped land to ascertain non-compliance to contracts' obligations and ensure that in instances of non-compliance with such contractual obligations, such land reverts back to the Municipality and;
- (f) ensure compliance with this Policy and relevant legislation.

**21. IMPLEMENTATION AND REVIEW PROCESS**

- (a) This Policy shall come into effect on the date of the council resolution;
- (b) This Policy may be reviewed annually and when required by way of Council resolution.

**ANNEXURE: A****ALIENATION OF LAND****1. CONDITIONS OF SALE**

The following general conditions apply in the event where immovable asset is sold / alienated:

- 1.1 All costs pertaining to a transaction shall be borne by an applicant, e.g. survey, re-zoning, sub-division, consolidations, advertisements, relocation or provision of services, except in cases where Council initiates the transaction for its own benefit;
- 1.2 Compliance with all statutory requirements shall apply to an applicant who shall be responsible to meet such statutory requirements;
- 1.3 Where applicable, existing services shall be secured by means of the registration of servitude in favour of Council and costs shall be for the account of the applicant;
- 1.4 Where applicable and possible, a portion of immovable asset which is sold to an adjacent owner such portion shall be re-zoned, closed and consolidated with the applicant's asset;
- 1.5 When an immovable asset is sold, development must commence within five (5) years from the date of transfer, or possession taken, 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.
- 1.6 A suspensive condition must be included in the sale agreement to provide for forfeiture in the event that the development has not been commenced with. Furthermore, Council reserves the right to impose such conditions as deemed necessary, without limiting its rights to liquidated damages and reversionary clauses.

- 1.7 A reversionary clause shall be applicable to immovable asset transactions sold.
- 1.8 A reversionary clause shall be included in all agreements prohibiting the owner of the land to dispose thereof, or to dispose of the company, unless the land is fully developed in terms of the condition of sale or Council agrees to such a disposal.
- 1.9 The purchase price for land that is not financially viable such as unnamed lanes, streets, odd parcels will be alienated as determined by council from time to time.
- 1.10 The immovable asset may only be used for the purpose as approved by Council and purposes regularized by town planning schemes.
- 1.11 Where an immovable capital asset is alienated to a natural person, that person may transfer such an asset to a legal entity wholly owned by him or her.
- 1.12 All sale agreements shall be finalized and concluded 90 days after notification of Council's decision, failure to comply thereto shall render the approval as null and void. A suspensive condition clause shall be applicable to all transactions which are subject to the approval of re-zoning, sub-division, consolidation, etc.
- 1.13 No application to be processed unless applicant has confirmed in writing that it will bear all costs where applicable, e.g. legal, survey, re-zoning sub-division, consolidations, advertisements, relocation or provision of services, and a deposit as per prescribed rate to cover incidental costs have been paid.

**ANNEXURE B**

**1. CONDITIONS FOR LEASE / LETTING OF LAND**

The following general conditions shall be applicable in the event where Council's immovable asset is let.

- 1.1 No lease application shall be processed unless an applicant has confirmed in writing that he or she will bear all costs where applicable, e.g. legal, survey, re-zoning, sub-division, consolidations, advertisements, relocation or provision of services, and/or a deposit as per prescribed tariff to cover incidental costs has been paid.
- 1.2 The under-mentioned deposits and/or adequate/equivalent security/guarantee shall be applicable to leases where the rental is based on market value:
  - (i) a deposit equal to 3 months rental for commercial transactions;
  - (ii) a deposit equal to 1 month's rental for residential and social services transactions;
- 1.3 No immovable asset shall be sub-let, ceded or assigned without the prior approval of Council.
- 1.4 An owner of fixed immovable asset who leases an adjoining municipal immovable asset may be substituted by his successor in title for the duration of the remainder of the lease term as deemed necessary on the same terms and conditions and/or additional terms and conditions.
- 1.5 Rentals shall escalate annually at a percentage or preferably a percentage of property rates increase as approved by Council annually.
- 1.6 The lessee shall be liable for payment of rates and service charges in terms of the Property Rates and the Credit Control and Debt Collection policies of the Municipality.

- 1.7 The letting of lanes, public open spaces, road reserves and garden extensions shall be subject to the following:
- (i) closing off/securing, if required by the Council, shall be to its satisfaction;
  - (ii) costs for the relocation or installation of services shall be for the account of the lessee'; and
  - (iii) securing of servitudes.
- 1.8 Lessee's shall indemnify Council against any possible claims arising from the lease or use of the immovable asset.
- 1.9 Where land is leased, development must commence within five (5) years from the date of occupation or in accordance with the provisions of the lease agreement or the development programme submitted by the lessee and be complete in accordance with the provisions of the lease agreement or the development programme. A suspensive condition must be included in the lease agreement to provide for forfeiture in the event that the development has not been commenced with. Council furthermore reserves the rights to impose such conditions as deemed necessary, without limiting its rights to liquidated damages and reversionary clauses.
- 1.10 Lease periods may be on a short term ( 1-3 years), medium term (1-9.11 years) or long-term (1-30 years) basis.
- 1.11 The asset may only be used for the purpose for which it was let and purposes regularized by town planning schemes/zoning regulation.
- 1.12 Once an applicant has met all requirements the lease agreement shall be finalized and concluded within 2 months from date of Council's official request. Failure to comply within 2 months from date of request the awarding shall be regarded as null and void and applicant shall forfeit his/her deposit and be held liable for costs exceeding the deposit amount.

- 1.13 Officials from Council shall at all reasonable times be entitled to enter/inspect the immovable asset; and
- 1.14 All agreements shall contain a clause that improvements which Council requires, revert free of charge to Council once the lease period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled.

**2. LEASE PERIODS NOT EXCEEDING 12 MONTHS**

The letting of immovable assets for periods not exceeding twelve months without an option to renew:

- 2.1 Where applicable general conditions, shall apply:
- 2.1.1 Immovable assets let for short term periods, i.e. 14 days for circuses, church or cultural events, concerts etc, shall be subject to the following:
- (a) where applicable, applicant to provide or arrange with Council at its cost for services, i.e. refuse, water, electricity, ablution facilities;
  - (b) applicant shall return immovable asset in its original condition;
  - (c) rental as per prescribed tariff;
  - (d) applicant shall indemnify Council against any claims against Council; and
  - (e) applicant shall undertake in writing to compensate Council for any damages caused to Council asset which may arise from any circumstances whatsoever.

**ANNEXURE C:**

**3. PROJECTIONS, PROJECTING STRUCTURES AND ENCROACHMENTS**

Council may, subject to the following conditions as it may deem fit, include the payment of a prescribed rental:

- 3.1 Allow the erection or retention of a veranda, balcony, sign, sign-board or similar structure, device or contrivance which projects or extends into or over any public place or public street (hereinafter referred to as a "projection"); provided that:
- (a) Erection or retention of such a projection shall not be permitted on the level of more than one floor; and
  - (b) No such projection shall exceed the town planning scheme/zoning regulations applicable to the appropriate zoning.
- 3.2 When municipal immovable asset under the control or management of Council is encroached upon, Council may take steps as may, in the opinion of the Council, be necessary to remove or regularize such encroachment.

**ANNEXURE D:****1. SALE/LET OF LAND TO SOCIAL CARE USERS**

- 1.1 The letting of sports ground facilities, etc to the Sports Boards, Sports Federations and other similar bodies and affiliated sports clubs shall be let in accordance with the Municipality's policies and procedures.
- 1.2 Immovable assets may be sold/let out-of-hand to social benefit organisations, except where the market value is paid, the sale of immovable asset to such organizations must be subject to a suitable reversionary clause.
- 1.3 Land shall not be sold outright to social benefit organisations, it may be leased for five (5) years and thereafter should they have developed the erven, social benefit organisations will be afforded the first option to purchase such land.
- 1.4 The selling price or lease tariff for the out-of-hand sale or lease of immovable assets to social benefit organisations shall be 30% of market value as of the date of the lease agreement.
- 1.5 Should such immovable assets be the subject of further alienation to a third party, then the difference between the original purchase price and the market value shall revert back to council.