



# OVERBERG DISTRICT MUNICIPALITY

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## MANAGEMENT AND ADMINISTRATION OF IMMOVABLE ASSETS POLICY

APPROVED ON THIS 20 DAY OF April 2011.

## PREAMBLE

Immovable property of the Council needs to be managed and administrated in the best interests of the local community entailing the provision of a policy framework for the management of the Council's immovable property, the establishment of criteria for determining various categories of immovable property in order to regulate the use, sale and lease thereof and the establishment of criteria within which property transactions may be regulated within the following enabling legislation:

1. The Council has the right to govern the local government affairs of its communities, on its own initiative, subject only to national and provincial legislation, as provided for in the Constitution, 1996<sup>1</sup> ;
2. The Council has executive and legislative authority over, and has the right to administer the matters provided for in the Constitution<sup>2</sup>;
3. The municipal council makes decisions concerning the exercise of powers and performance of functions of the Council, save for those matters excluded by legislation<sup>3</sup>;
4. The Council has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers <sup>4</sup>;
5. The municipal council has the duty to use the resources of the Council in the best interests of the local communities, within the Council's financial and administrative capacity and having regard to practical considerations <sup>5</sup>.

## 6. GENERAL PRINCIPLES

6.1 The Council may:

- 6.1.1 alienate, let or permit to be built upon occupied, enclosed or cultivated, any immovable property owned by the Council;
- 6.1.2 grant a servitude on any land of which the Council is the owner subject to this policy and the provisions of applicable legislation<sup>6</sup> or,

unless it is precluded from so doing by law or the conditions under which such property was acquired by the Council.

6.2 The Council shall not act in terms of paragraph 6.1, save for the provisions mentioned in paragraphs 8.13 and 8.14, unless it has

6.2.1 advertised its intention to that effect by:

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<sup>1</sup> Constitution of the Republic of SA, 1996 (hereinafter referred to as the Constitution); s 151(3); and Local Government Municipal Systems Act 2000 (Act 32 of 2000) hereinafter referred to as the Systems Act), s4(1)(a).

<sup>2</sup> Constitution, s 156(1); Systems Act (8)(1) and 11(1); and Local Government Municipal Structures Act, 1988 (Act 117 of 1988) (hereinafter referred to as the Structures Act) s 83(1).

<sup>3</sup> Constitution, s 160(1)(a).

<sup>4</sup> Systems Act, s 8(2).

<sup>5</sup> Systems Act, s 4(2)(a).

<sup>6</sup> For example, but not limited to, the Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983) as far as the conservation of the soil, the water sources and the vegetation and the combating of weeds and invader plants are concerned.

6.2.1.1 having published in a newspaper that is circulated within the area of the town where the relevant property is situated, in which any person who wishes to object to proposed intention, is called upon to lodge his/her objection in writing with the municipal manager within a period of not less than **30 (thirty days)** from the date of the publication of the notice in the newspaper and

6.2.1.2 having affixed notices in terms of legislation to the public notice boards of the Council.

6.2.2 considered the objections (if any) lodged in accordance with the advertisement contemplated by paragraph 6.2.1.1.

6.3 The Council may:

6.3.1 not transfer ownership as a result of a sale or other transaction, or otherwise permanently dispose of immovable property needed to provide the minimum level of basic municipal services<sup>7</sup>;

6.3.2 transfer ownership or otherwise dispose of immovable property other than contemplated in paragraph 6.3.1, but only after the municipal council, in a meeting open to the public –

6.3.2.1 has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services, and

6.3.2.2 has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset<sup>8</sup>.

6.3.3 A decision by the municipal council that a specific immovable property is not needed to provide the minimum level of basic municipal services, may not be reversed by the Council after that asset has been sold, transferred or otherwise disposed of<sup>9</sup>.

6.3.4 Any transfer of ownership of immovable property in terms of paragraph 6.3.2 must be fair, equitable, transparent, competitive and consistent with the supply chain management policy of the Council<sup>10</sup>.

6.4 Paragraphs 6.2 and 6.3 do not apply to the transfer of immovable property to another Council or to a national or provincial organ of state.

6.5 The community value<sup>11</sup> to be received in exchange for an asset shall be applicable and taken into consideration:

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<sup>7</sup> Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)(hereinafter referred to as the Finance Management Act), s14(1); "basic municipal service" is defined in the Finance Management Act as "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."; the 1998 White Paper on Local Government defines good basic services as "water, sanitation, local roads, storm water drainage, refuse collection and electricity," p.23.

<sup>8</sup> Finance Management Act, s 14(2)

<sup>9</sup> Finance Management Act, s 14(3)

<sup>10</sup> Finance Management Act, s 14(5); the Council must have a supply chain management policy in terms of s 111.

<sup>11</sup> 11.Finance Management Act, s 14(2)(b).

- 6.5.1 in the case of sales to social care organizations/institutions in <sup>12</sup> which case the purchase price of such immovable property shall be fixed at 50% of the market value and shall be subject to a reversionary clause being included in the relevant deed of sale; and
- 6.5.2 in the case of immovable properties referred to in the Housing Act, 1997 (Act 107 of 1997), or any ensuing act, in which case such properties shall be sold/let as provided for in that Act.
- 6.6 Alienation or leasing must be effected by means of public competition, except in the instances detailed in paragraphs 6.5.1, 6.5.2 and 10.
- 6.7 The Council shall, as a rule, bearing in mind the provisions of paragraph 6.8 and save for those cases mentioned in paragraphs 6.5 and 10.2, not –
- 6.7.1 let immovable property at a lower rental than the rental determined;
- 6.7.2 sell, alienate or dispose of immovable property, grant a servitude or alienate a right at a lower amount than the amount at which it has been valued;
- 6.7.3 exchange immovable property for other property if the amount at which the other property has been valued is lower than the amount at which the immovable property which the Council wishes to exchange, has been valued.
- 6.8 The fair market value or the rental amount of property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser.
- 6.9 In assessing tenders, the Council will take cognisance of the total cash value of the packages offered by the tenderers, where such packages are permissible in terms of the conditions of the tender. In other words, where the actual amounts tendered are roughly similar, but a particular tenderer, for example, also offers to make improvements to the property, the cash value of such improvements, which proposed improvements may not be deviated from, may also be taken into consideration to determine the highest tender.
- 6.10 Where immovable property is alienated or leased for a specific type of development project, including a business project, and the specific type of development which the Council is prepared to allow, is of cardinal importance, the Council may call for development proposals, which may include a monetary offer. In such a case, the price offered for the immovable property by the developer will only form part of the total package.

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<sup>12</sup> For the purposes of this policy 'social care' is defined as services provided by recognized welfare, charitable, non-profit, amateur and school sporting, cultural or religious organizations.

- 6.11 Should the Council consider it desirable not to accept the highest tender or offer or decide to accept a particular development proposal in which the amount tendered 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.
- 6.12 In cases where tenders are, according to the discretion of the council, identical and the provisions of paragraphs 6.10 and 6.11 are not applicable, the successful tenderer may be determined by the drawing of lots.
- 6.13 Immovable property sold or let by the Council shall be inspected regularly by officials of the Council to ensure compliance with the terms and conditions of the agreement of sale or lease.
- 6.14 The Council shall at all times, when considering the alienation of its immovable assets, take into consideration the Council's obligation to, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to identify and designate land for housing development

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## **7 CONDITIONS OF SALE**

- 7.1 All costs pertaining to a transaction shall be borne by the buyer, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Council may, however, waive its right to claim the costs should it be to its advantage to bear the costs. Where necessary, a deposit to cover the costs may be required.
- 7.2 Where applicable, existing services must be relocated or secured by means of the registration of a servitude in favour of the Council and costs shall be borne by the buyer.
- 7.3 Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the Council, make such consolidation undesirable.
- 7.4 Where immovable property is sold for development, a condition must be included in the Deed of Sale stipulating that such development must be completed within two years from date of purchase. Likewise a condition must be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless an extension has been granted by the Council.
- 7.5 Save with prior approval, the property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations.
- 7.6 The agreement of sale shall be finalised and concluded within 90 days from the date of the official request; failure to comply shall cause the sale to lapse.

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<sup>13</sup> Housing Act, 1997 (Act 107 of 1997), s 9(1)(c)

7.7 The agreement must contain a suspensive condition in respect of property which is sold subject to approval in terms of land use legislation.

## **8. CONDITIONS OF LEASE**

8.1 All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services, where necessary, shall be borne by the Lessee. The Council may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.

8.2 No immovable property shall be sub-let and no lease may be ceded or assigned without the prior approval of the Council.

8.3 An owner of immovable property who leases adjoining municipal property may be substituted by his successor in title for the duration of the remainder of the lease term.

8.4 Rental, except where it is decided otherwise by the Council, shall escalate annually by a percentage fixed in accordance with the consumer price index averaged over the three months prior to commencement of the lease.

8.5 The Lessee shall, as a rule, be liable for the payment of rates and service charges in respect of the property. In the case of leases to certain social care users at rentals lower than market value, the Council may consider granting a rebate on rates. In the case of small unsurveyed areas of land used for gardening purposes, etc. no rates shall be levied.

8.6 The letting of lanes, public open spaces, road reserves and the like shall be subject to the following:

8.6.1 closing off/securing by the Lessee to the satisfaction of the Council; and

8.6.2 the Lessee shall be responsible for the cost of relocation or installation of services where required and for the securing of servitudes.

8.7 The Lessee shall indemnify the Council against any possible claims arising from the lease or use of the immovable property.

8.8 Where land is leased for development, a condition shall be included in the lease agreement stipulating that such development shall be completed within two years from date of conclusion of the lease agreement. Likewise a suspensive condition shall be included in the lease agreement to provide for cancellation in the event that the development has not been completed.

8.9 Save with prior approval of the Council, the property may only be used for the purpose for which it was let.

8.10 Officials of the Council shall at all reasonable times be entitled to enter and inspect the immovable property.

8.11 The Lessee shall be responsible for maintaining the leased property.

- 8.12 Improvements provided by the Lessee and which the Council wishes to retain, shall revert, free of charge, to the Council once the lease period has terminated and/or in the event of breach of contract. Any improvements erected from his/her own funds that the Lessee has the right to remove, must be removed within three months of termination of the lease agreement, failing which such improvements shall revert to the Council free of charge.
- 8.13 Lease agreements for a term up to 3-years entered into under this policy may be renewed without applying the provisions of paragraph 6.2.
- 8.14 Immovable property let for short-term periods up to 12 months without the option of renewal, need not be advertised in terms of paragraph 6.2 but shall be subject to *inter alia* the following:
- 8.14.1.1 the Lessee shall be responsible for all costs regarding services, ablution facilities, etc. if required;
  - 8.14.1.2 the Council shall determine the rental to be paid;
  - 8.14.1.3 the Lessee shall undertake in writing to compensate the Council for damages caused to the property for whatever reason.
  - 8.14.1.4 the Lessee shall indemnify the Council against any claims.

## **9. OUT OF HAND SALE AND LETTING**

- 9.1 Where any immovable property is offered for sale or lease by public competition, any remaining immovable property may be sold, subject to the provisions of paragraph 6.3.2, or leased out of hand by the Council at the upset price or higher. 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 Council shall review the position on a regular basis.
- 9.2 In the case of the out-of-hand lease of immovable property to social care organisations/institutions, the rental shall be determined by the Council.
- 9.3 Closed streets and lanes, public open spaces and odd lots of land which can be of no practical use to any other person may be sold/leased out of hand to adjoining owners, provided that -
- 9.3.1 written notices have been served on all adjoining owners; and
  - 9.3.2 the selling price/rental shall be at market value, provided that the Council shall determine the rental of land for garden purposes.
- 9.4 Immovable property may be sold/leased out of hand to other spheres of government and other local authorities. All such immovable property transactions shall be considered at a market value basis, except in the following cases:
- 9.4.1 Where immovable property was acquired for the development of a less formal township and such township is to be transferred to the Council at a later stage;

9.4.2 Where the property will be used for projects with a view to social and economic upliftment of a previously disadvantaged group.

9.5 Immovable properties may be sold out of hand to existing tenants who have leased such premises for five years or longer on condition that the immovable property is sold at market value.

9.6 Immovable property may be sold/leased out of hand in exceptional cases where the Council has a reasonable belief, objectively determined, that 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 this policy document provides for such exception is permitted, and where they are not in conflict with any provision of this policy document. In such cases the full reasons for council preferring such out-of-hand sales or leases shall be recorded in the minutes of the council meeting concerned.

9.7 Odd lots of land which can be of no practical use to any other person may be sold, subject to the provisions of paragraph 6.3.2, or leased out of hand to any applicant.

9.8 Immovable property acquired by a Council for public purposes or in the community's interest, may be leased out of hand to any applicant for temporary use until such time as the property is required for development.

9.9 Houses may be sold/leased out of hand to employees of the Council, on condition that rentals comply with any policy laid down and those selling prices are market related.

## **10. PROJECTIONS, PROJECTING STRUCTURES AND ENCROACHMENTS**

10.1 The Council may, subject to such conditions as it may deem fit –

10.1.1 permit the erection or retention of a veranda, balcony, sign, signboard or similar structure, device or contrivance which projects or extends into, under or over any public place or public street (hereinafter referred to as a “projection”) provided that:

10.1.1.1 the erection or retention of such a projection shall not be permitted on the level of more than one floor;

10.1.1.2 no such projection shall be wholly enclosed to a height of more than one comma five metres measured from the floor level thereof; and

10.1.1.3 no such projection shall be partially enclosed to a height of more than one comma five metres measured from the floor level thereof except with the prior written approval of the council and subject to such conditions as it may impose, or

10.1.2 permit encroachments on road reserves and public thoroughfares in order to encourage adjoining owners to maintain the road reserves adjoining their properties, provided that:

- 10.1.2.1 the planting of trees and shrubs and the erection of seating, statuary or other similar objects within one comma five metres measured from the tarred or gravel surface of the road, is not permitted;
- 10.1.2.2 the one comma five meter area referred to in paragraph 10.1.2.1 may be planted with lawn of a type approved by the relevant directorate of the Council and subject to the owner of the adjoining property allowing at all times the free movement of pedestrians and the parking of vehicles in those encroached areas;
- 10.1.2.3 no encroachment fee shall be charged by the Council and no formal agreement need to be entered into in respect of the above encroachment; and
- 10.1.2.4 the Council shall have the right of free access to the encroachment at all times for inspection, maintenance and repair of any services which may traverse the encroachment or to install such services in which case the Council shall not be liable for any damage to the encroachment which may arise from such inspection, maintenance, repair or installation, or
- 10.1.3 permit encroachments of garden areas onto commonage, public open spaces or conservation areas, save for the area mentioned in paragraph 10.1.2.2, provided that:
- 10.1.3.1 written applications accompanied with an application fee tantamount to the relevant council's fee in respect of applications for departure, for such encroachments plus 10% administrative costs shall be submitted to the Council;
- 10.1.3.2 the Municipal Manager or his duly authorised nominee shall –
- 10.1.3.2.1 cause the said application to be advertised <sup>14</sup>;
- 10.1.3.2.2 where objections against the said application are received, submit them to the applicant for his/her comment;
- 10.1.3.2.3 obtain the comment of the relevant parties;
- 10.1.3.2.4 submit the application and all relevant documents to the council or its nominee;
- 10.1.3.2.5 notify the applicant of the council's or its nominees decision and where applicable furnish him/her with a copy of any conditions imposed by the council or its nominee;
- 10.1.3.2.6 issue a permit to the successful applicant to give effect to the approval of the application and

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<sup>14</sup> "advertise" in this context has the same meaning as the definition of same provided for in the Land Use Planning Ordinance, Ord 15 of 1985, s 2(i)

10.1.3.2.7 levy an annual encroachment fee, determined by the relevant council, be levied/proportionally levied on successful applicants for the right obtained to encroach.

10.1.4 permit the enclosure or exclusive use of portions of the commonage or public open spaces for gardening purposes, provided that:

10.1.4.1 the provisions of paragraphs 6 and 8 of this policy shall apply; and

10.1.4.2 the manager: town planning or his duly authorised nominee shall also obtain the comment of the relevant municipal directorate in respect of each such application in order to submit same to council or its nominee for consideration.

10.1.5 permit the use of municipal land for outdoor seating adjoining a restaurant, provided that:

10.1.5.1 the provisions of paragraphs 6 and 8 of this policy shall apply and

10.1.5.2 the safe movement of pedestrians are not hampered.

10.2 The Council may reduce the extent of a public place or public street which is encroached upon by the extent of the encroachment or by such greater extent as may, in its opinion, be desirable.

10.2.1 All applications under item 10, applied for at B-municipalities on behalf of Lessees, will be paid by the Lessees in advance at the amount charged by the relevant municipality plus a 10% administration fee.