

POLICY AND PROCEDURES FOR THE DISPOSAL OF IMMOVABLE ASSETS

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**Policy and Procedures for the Disposal
of Immovable Assets**

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Having regard to the provisions of, inter alia, section 14 of the Local Government: Municipal Finance Management Act 56 of 2003, Regulation 40 of the Municipal Supply Chain Management Regulations published by General Notice No. 868 of 2005 and the Municipal Asset Transfer Regulations published by General Notice No. 878 of 2008, the Kouga Municipality shall, as from the date of adoption hereof, implement this policy in respect of the sale and transfer of and the granting of rights to use, control or manage its immovable capital assets.

1. INTERPRETATION AND DEFINITIONS

The headings of the clauses in this Policy are for the purposes of convenience and reference only and shall not be used in the interpretation of, nor modify, nor amplify the terms of this Policy, nor any clause hereof. Unless a contrary intention clearly appears:

- 1.1 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
 - 1.1.1 "Accounting Officer" means the Municipal Manager of the Municipality;
 - 1.1.2 "Act" means the Local Government: Municipality Finance Management Act 56 of 2003 and the Regulations promulgated thereunder;
 - 1.1.3 "Basic Municipal Service" means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, will endanger public health or safety or the environment;
 - 1.1.4 "Capital Asset" for the purposes of this Policy, means any immovable property such as land, property or buildings owned by the Municipality;

- 1.1.5 "Council" means the full Council of the Municipality;
- 1.1.6 "Encumbrance" in relation to a Capital Asset, means a right to the Capital Asset that is held by a third party that limits the owner's use of the asset;
- 1.1.7 "Exempted Capital Asset" means a Capital Asset which exempted by Section 14(6) of the Act from the other provisions of that section;
- 1.1.8 "Fair Market Value" in relation to a Capital Asset, means the value at which a knowledgeable willing Buyer would buy and a knowledgeable willing Seller would sell the Capital Asset in an arm's length transaction which, for the purposes of this Policy, shall be determined by a Registered Valuer;
- 1.1.9 "High Value" in relation to a Capital Asset, means that the Fair Market Value of the Capital Asset exceeds any of the following amounts:
- 1.1.9.1 R50 Million;
- 1.1.9.2 One per cent of the total value of all capital assets of the Municipality as determined from the latest available audited financial statements of the Municipality; or
- 1.1.9.3 An amount determined by resolution of the Council which is less than
- 1.1.9.1 or 1.1.9.2;
- 1.1.10 "Land Evaluation Committee" means the Land Evaluation Committee established by the Municipality to evaluate tenders, auctions, expressions of interest or other bids and objections in respect of the sale and transfer of and the granting of rights to use, control or manage immovable Capital Assets of the Municipality;
- 1.1.11 "Long Term lease" means a period of longer than 3 (three) years;
- 1.1.12 "MSA" means the Local Government: Municipal Systems Act 32 of 2000;
- 1.1.13 "Municipality" means the Kouga Municipality, a Category B Municipality established by Part 2 of Schedule 1 of Notice 85 in the Eastern Cape Provincial Gazette No. 654 on 27 September 2000 promulgated in terms of Section 12(1) of the Local Government: Municipal Structures Act 117 of 1998, for the municipal area described in such Notice;
- 1.1.14 "Municipal Manager" means the person appointed by the Municipality in terms of Section 82(1)(a) or (b) of the Local Government: Municipal Structures Act 117 of 1998;
- 1.1.15 "Municipal Service" means a service that the Municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether:

1.1.15.1 such a service is provided or to be provided by the Municipality

through and internal mechanism contemplated in Section 76 of the MSA or by engaging an external mechanism contemplated in Section 76 of the said Act; and

1.1.15.2 fees, charges or tariffs are levied in respect of such a service or not.

1.1.16 "Non-Exempted Capital Asset" means a Capital Asset which is not exempted by Section 14(6) of the Act from the other provisions of that Section;

1.1.17 "Organ of State means:

1.1.17.1 a national department or national public entity;

1.1.17.2 a provincial department or provincial public entity;

1.1.17.3 a municipality or municipal entity; or

1.1.17.4 any other organ of state within the meaning assigned to "Organ of State" in Section 239 of the Constitution.

1.1.18 "Preference"

The local residents of a specific area will be afforded preference in respect of the letting of immovable properties within that demarcated/designated area.

1.1.19 "Private Sector Party" means a person who is not an Organ of State;

1.1.20 "Proposal" means a written offer from a seller to a prospective buyer. And vise

versa

1.1.21 "Public property"

All land owned by any organ of state and public property not registered in the name of the Kouga Municipality that is used, managed, protected, conserved and enhanced in the interests of the whole community, e.g. road reserves, open space and state land that vests in the Municipality or is proclaimed by any other organ of state.

1.1.22 "Public Road"

Any road, street or thoroughfare or any Public Place (whether a thoroughfare or not) which is commonly used by the general public or to which the public has a right of access, and includes:

(a) any services servitude and public passage on public land;

(b) the side-walk or verge of any such road, street or thoroughfare;

(c) any bridge, structure or drift traversed by any such road, street or thoroughfare; and

(d) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare

1.1.23 "Registered Valuer" means a person contemplated in the Property Valuers Profession Act No. 47 of 2000;

1.1.24 "Right to Use, Control or Manage" in relation to a Capital Asset, means a right to use, control or manage the Capital Asset for a period exceeding one (1) calendar month without ceding legal ownership in the Asset which, for the purposes of this Policy, shall include a Lease and servitude;

1.1.25 "Social care"

Defined as child care facilities in so far as it contributes to the functioning of a multi-use child care facility and is operated on a non-profit basis; services provided by registered welfare, charitable, non-profit, cultural organisations; centres utilised as homes for the handicapped and disabled persons; non-profit rehabilitation centres; homes or centres for indigent, battered or destitute people; organisations for the homeless and elderly; youth activity or culture centres and organisations; community development organisations operating on a non-profit basis or amateur sporting, cultural or recreational organisations.

1.1.26 "Structures Act"

The Local Government: Municipal Structures Act (nr 117 of 1998).

1.1.27 "Solicited bid" means when a municipality sends out request for proposals. This can be done via process of an advertisement in the media. The request come with a description of what Municipality wants and as well the criteria that will be used to make a selection.

1.1.28 "Unsolicited bid" is a bid/proposal received from a developer/public to acquire immovable property, or rights in immovable property, that is owned by the Municipality, outside the normal bidding process, i.e. without the Municipality having asked for such proposal/bid.

1.1.29 "Supply Chain Management Policy"

The Supply Chain Management Policy of the Kouga Municipality approved and adopted by Council as amended from time to time.

1.1.30 "Systems Act"

The Local Government: Municipal Systems Act (nr 32 of 2000).

1.1.31 "the Constitution"

The Constitution of the Republic of South Africa, 1996.

1.1.32 "the Ordinance"

The Local Government: Municipal Ordinance, 1974 (Ordinance 20 of 1974).

1.1.33 “The Regulations”

Local Government: Municipal Finance Management Act (no. 56 of 2003) Municipal Asset Transfer Regulations (MATR).

1.1.34 “Transfer”

Transfer of ownership as a result of sale or other transaction (e.g. exchange, donation, etc.).

1.1.35 “Acquisition Committee” – means such Committee as is established by the KLM in relation to Acquisition Management in accordance with the MFMA and the Supply Chain Management Policy;

1.1.35 “Code of Conduct for Councillors” – means item 5 or 6 of the Code of Conduct for Councillors as set out in schedule 1 to the Municipal Systems Act 32 of 2000;

1.1.36 “Code of Conduct for Municipal Staff Members” – means item 4 or 5 of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 to the Municipal Systems Act 32 of 2000;

1.1.37 “Community Value” – means any value to be received in exchange for any immovable capital asset as determined by the Municipal Council in accordance with Section 14(2)(b) of the MFMA;

1.1.38 “Councillor” – means any elected member of a Municipal Council in terms of Municipal Structures Act;

1.1.39 “Economic Value” – means any value to be received in exchange for any immovable capital asset as determined by the Municipal Council in accordance with Section 14(2)(b) of the MFMA;

1.1.40 “Gratification” – includes -
money, whether in cash or otherwise;

any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable or any other similar advantage;

the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;

any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation;

any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

any forbearance to demand any money or money’s worth or valuable thing;

any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;

any right or privilege;

any real or pretended aid, vote, consent, influence or abstention from voting; or

any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage;

1.1.41 "Induce" – includes to persuade, encourage, coerce, intimidate or threaten;

and

1.1.42 "Inducement" – has a corresponding meaning;

1.1.43 "IPAC" - means Immovable Property Adjudicating Committee

1.1.44 "Land Evaluation Committee" – means the Kouga Municipality Land Evaluation Committee;

1.1.45 "Member" – means a member of the Land Evaluation Committee;

1.1.46 "Municipal Council" – means the Council of the Kouga Municipality;

1.1.47 "Municipal Entity" – has the meaning assigned to it in Section 1 of the Municipal Systems Act;

1.1.48 "MFMA" – means the Local Government: Municipal Finance Management Act 56 of 2003;

1.1.49 "Municipal Manager" – means the Municipal Manager of the KLM appointed in terms of the Municipal Structures Act;

1.1.50 "Municipal Structures Act" – means the Local Government: Municipal Structures Act 117 of 1998;

1.1.51 "Municipal Systems Act" – means the Local Government: Municipal Systems Act 32 of 2000;

1.1.52 "KLM" – means the Kouga Local Municipality;

1.1.52 "Official" – means –

an employee of the ; KLM

a person seconded to the KLM to work as a member of the staff of the KLM; or

a person contracted by the KLM to work as a member of the staff of the KLM otherwise than as an employee;

1.1.53 "Policy" – means the policy and procedures for the disposal of immovable capital assets as adopted by the KLM;

1.1.54 "Supply Chain Management Policy" – means the Supply Chain Management Policy adopted by the KLM in terms of the MFMA;

2. GENERAL PRINCIPLES

The Municipality may:

- (a) alienate or let or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the Municipality;
- (b) grant a servitude, way leave, encroachment or other rights on any immovable property of which the Municipality is the owner
 - i) subject to this policy document and the provisions of applicable legislation; or
 - ii) unless it is precluded from so doing by law or the conditions under which such property was acquired by the Municipality.
- (c) enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and
- (d) enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA and the Public-Private Partnership Regulations.

Any reference to an enactment is to that enactment as at the date of adoption of this Policy and as amended or re-enacted from time to time.

3. APPLICATION OF THIS POLICY

This Policy applies to:

- 3.1 The sale and Transfer of Capital Assets by the Municipality; and
- 3.2 The granting by the Municipality of the Rights to Use, Control or Manage Capital Assets.

4. EXEMPTIONS

- 4.1 This Policy shall not be read as permitting the sale and Transfer of Non-Exempted Capital Assets, needed to provide the minimum level of Basic Municipal Services.
- 4.2 This Policy does not apply to the sale and Transfer of Non-Exempted Capital Assets in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005.
- 4.3 This Policy does not apply to the sale and Transfer of housing on municipal land and the Transfer of that municipal land for the poor to beneficiaries of such housing.

- 4.4 This Policy does not apply to the granting by the Municipality of Rights to Use, Control or Manage Capital Assets in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005.
- 4.5 This Policy does not apply to the granting by the Municipality of Rights to Use, Control or Manage municipal land for housing for the poor to beneficiaries of such housing.
5. **DISPOSAL OR TRANSFER OF IMMOVABLE PROPERTY**
- 5.1 In disposing of property, the Municipality shall seek to address: -
- i) The undoing of negative legacies
 - ii) Correct socio-economic deficiencies
 - iii) Adequately maintain the value of its resources
 - iv) Address the social economic problems that have been handed down from the past
- 5.2 The determination of what is in the "public interest" when Municipal land is disposed of and what factors must or may be taken into account in deciding on the disposal
- 5.3 The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.
- 5.4 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 Municipality after that immovable property has been sold, transferred or otherwise disposed of in accordance with Section 14(3) of the MFMA.
- 5.5 The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g. non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.
- 5.6 Transfer or disposal of a non-exempted high value immovable property
- 5.6.1 The Municipality may transfer ownership or otherwise dispose of a non-exempted high value immovable property only after:
- (a) the Accounting Officer, through the Estates and Property Department, has conducted a public participation process to facilitate the determinations the municipal council must make in terms of sections 14(2)(a) and (b) of the MFMA; and
 - (b) the municipal council has, in terms of sections 14(2)(a) and (b) of the MFMA,:

- i) decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services;
 - ii) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and
 - iii) has as a consequence to 5.6(b)(i) and (ii) above approved in principle that the immovable property asset may be transferred or disposed of.

- 5.7 The public participation process in terms of paragraph 8.1(a) may only be authorised by the Municipal Council. A request to the Municipal Council for authorisation of a public participation process must be accompanied by:
 - (a) a valuation and the method used to determine the value of the immovable property to be transferred or disposed of;
 - (b) the reasons for the proposed transfer or disposal of the immovable property;
 - (c) any expected benefits to the Municipality as a result of the proposed transfer or disposal;
 - (d) any expected proceeds to be received by the Municipality from the proposed transfer or disposal, and
 - (e) any expected gain or loss to be realised or incurred by the Municipality arising from the proposed transfer or disposal.

- 5.8 If the public participation is authorised, the accounting officer must at least 60 days before the meeting of Council at which the determinations referred to in 5.6(b)(i) and (ii) above are considered –
 - (a) make public the proposal to transfer or dispose of the immovable property;
 - (b) invite the local community and other interested parties to submit comments or representations in respect of the proposed transfer or disposal of the immovable property;
 - (c) solicit the views and recommendations of the National Treasury and the relevant Provincial Treasury on the matter.

- 5.9 Transfer or disposal of a non-exempted immovable property (not high value)

- 5.10 The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:
 - (a) decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services;

- (b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and
- (c) has as a consequence to 5.10(a) and (b) above approved in principle that the immovable property may be transferred or disposed of, and the method of disposal or transfer.
- 5.11 The Municipality may transfer ownership or otherwise dispose of a non-viable immovable property, as non-exempted immovable property which can be of no practical use to any other person, directly to adjoining property owner(s), only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:
- (a) decided on reasonable grounds that the non-viable immovable property is not needed to provide the minimum level of basic municipal services;
- (b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and
- (c) has as a consequence to 5.11(a) and (b) above approved in principle that the immovable property may be transferred or disposed, provided that, when giving the in principle approval, it is recorded in the minutes the full reasons for the Municipality preferring such direct transfer.
- 5.12 Where viable immovable property is offered for sale by public competition, any immovable property which remains unsold in such project may be sold out-of-hand by the Municipality at the upset price or higher, as long as it is satisfied that market prices are stable. The upset price must be determined in a way that corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs. The upset price must be reviewed at least every twelve months
- 5.13 The Municipality shall not act in terms of paragraphs 5.6, 5.10 and 5.11 above, unless it has:
- 5.13.1 Advertised its intention so to act by causing a notice to that effect to be:
- (a) affixed to the public notice boards of the Municipality;
- (b) published in a newspaper that is circulated within the area of the town where the relevant property is situated;
- (c) published on the official website of the Municipality, and
- (d) in the case of immovable property valued at R2,5 million or higher, published in regional newspapers that are circulated within the province of the town where the relevant immovable property is situated unless a property valued less than R2,5 million at the sole discretion of the Municipality warrants publication in these newspapers, in accordance with Section 21A of the Systems Act, in which any person who wishes to object to the exercise of any such intention, is

called upon to lodge his/her comments, objection or representations in respect of such intention in writing with the Municipal Manager within a period of not less than thirty days from the date of the publication of the notice in the newspaper;

5.13.2 considered the objections or counter offers (if any) lodged in accordance with the advertisement contemplated by paragraph 5.13.1.

5.14 Approval in terms of 5.10(c) and 5.11(c) may be given subject to any conditions, including:

(a) the way in which the immovable property is to be sold or disposed of;

(b) a reserve price or minimum compensation for the immovable property;

(c) whether the immovable property may be transferred or disposed of for less than its fair market value, in which case the criteria set out in clause 9 must be considered, and

(d) a framework within which direct negotiations for the transfer or disposal of the immovable property must be conducted with another person, if transfer or disposal is subject to direct negotiations.

5.15 Transfer or disposal of an exempted immovable property

5.15.1 Paragraphs 5.5 and 5.13 above do not apply to the transfer of immovable property 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 in Regulation 20 of the MATR, provided that such transfers are in accordance with a prescribed framework contained in Chapter 3 of the MATR.

5.15.2 Where the requirements stipulated in Chapter 3 of the MATR are met, then notwithstanding fact that the transfer or disposal may be in respect of immovable property which is required to provide the minimum level of basic services, such disposals need not be at market related value and do not require a public participation process described in the MATR in respect of non-exempted disposals.

5.16 The Municipal Council must, when considering any proposed transfer or disposal of immovable property, take into account the aspects listed in Regulation 7 and 20(1)(f)(ii) of the MATR.

5.17 Sections 14(1) to (5) of the MFMA and Chapter 2 of the MATR must be applied if a municipality transfers a immovable property to an organ of state where none of the circumstances mentioned in regulation 20 apply, including when the immovable property is transferred in the course of an ordinary commercial transaction between the municipality and the organ of state.

5.18 Alienation of immovable property by means of a competitive process

- 5.18.1 The transfer of immovable property must, except in the case of non-viable immovable property, be affected by means of competitive process, which may include a public or closed tender, auction or proposal call.
- 5.18.2 The upset price for immovable property to be alienated by means of a competitive process will be determined in such a way that it corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs.
- 5.18.3 In assessing tenders, the Municipality will take cognisance of the total cash value of the packages offered by the bidders, where such packages are permissible in terms of the conditions of tender. In other words, where the actual amounts tendered are roughly similar, but a particular bidder, for example, also offers to make improvements to the immovable 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.
- 5.18.4 Should the Municipality 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 bid adjudication committee meeting in question and if applicable the minutes of the appeal tribunal.
- 5.18.5 In cases where tenders are according to the findings of the bid adjudication committee identical and the provisions of paragraph 5.18.4 are not applicable, the successful bidder may be determined by the drawing of lots in the presence of the involved parties.
- 5.19 The Municipality shall at all times when considering the alienation of its immovable property, take into consideration the Municipality'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 in terms of the Housing Act, 1997 (Act 107 of 1997).
- 5.20 Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration.
- Likewise a condition may 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 a written extension has been granted by the Municipality.
- 5.21 Plight of the poor
- 5.21.1 Whenever the plight of the poor shall be a consideration in any decision to be taken in respect of the acquisition, disposal or letting of immovable property, regard shall be given to:
- i) the extent to which the needs of the poor are or have been addressed,
 - ii) the potential loss or benefit the poor can suffer or gain through the decision concerned and

iii)the financial resources available to address the needs of the poor.

5.22 First time home owners

5.22.1 Immovable property purchased from Council by a first-time homeowner shall not, without Council's written consent, be resold within a period of 5 years of the date of transfer unless it was acquired through a fair tender process. This stipulation must be included in the Deed of Sale where it is applicable.

The need to promote first time home ownership in previously disadvantaged communities is recognised. The main objective of this method is the promotion of first time home ownership in previously disadvantaged communities. Natural persons who had never owned a home.

6. LEASING OF MUNICIPAL IMMOVABLE PROPERTY

The Leasing of Council owned Municipal property will dealt with in depth under a separate policy. This section should be read with that policy.

6.1 Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

6.1.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 6.3 below; or

6.1.2 a direct lease.

6.2 Council may let immovable property for development purposes aligned with its strategic objectives.

6.3 A competitive process must at all times be followed in circumstances where:

6.3.1 the lease is for a long term with an income value in excess of R10 million;

6.3.2 the lease is for a formal business premises with a market related rental;

6.3.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or

6.3.4 by discretion of the municipality, a competitive process will best serve the interests of the community.

6.4 In order to achieve the objective of broad based economic empowerment, Council may limit the number of leases per tenderer in the course of a tender process.

6.5 Council may entertain unsolicited bids for the lease of viable immovable property for development purposes, subject to Section 113 of the MFMA.

6.6 Long term lease of municipal immovable property with an income value in excess of R10 million:

- 6.6.1 The Municipality may grant a long term lease of municipal immovable property with an income value in excess of R10 million only after:
- (a) the Accounting Officer has, through the Planning & development, conducted a public participation process; and
 - (b) the Municipal Council has approved in principle that the right may be granted.
- 6.6.2 The public participation process in terms of paragraph 6.6.1(a) may only be authorised by the Municipal Council. A request to the Municipal Council for authorisation of a public participation process must be accompanied by:
- (a) the reasons for the proposal to grant the long term lease;
 - (b) any expected benefits to the Municipality as a result of the lease;
 - (c) any expected proceeds to be received by the Municipality from the proposed lease, and
 - (d) any expected gain or loss to be realised or incurred by the Municipality arising from the lease.
- 6.7 If the public participation is authorised, the accounting officer must at least 60 days before the meeting of Council at which the determinations referred to in 6.6 above are considered
- (a) make public the proposal to lease the asset;
 - (b) invite the local community and other interested parties to submit comments or representations in respect of the proposed lease of the asset;
 - (c) solicit the views and recommendations of the National Treasury and the relevant Provincial Treasury on the matter.
- 6.8 Non-viable streets, lanes, public open spaces and non-viable surplus immovable property may be let out-of-hand 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.
- 6.9 The Municipal Council must, when considering any proposed lease of municipal immovable property with a value in excess of R10 million, take into account the aspects listed in Regulation 36 of the MATR.
- 6.10 Long term lease of municipal immovable property with an income value less than R10 million:
- 6.10.1 The Municipality may grant a long- term lease of municipal immovable property with an income value of less than R10 million only after:

- (a) the Accounting Officer has approved the lease in principle;
 - (b) in the case of a direct lease, the proposed lease was advertised in terms of paragraph 5.13.1 and 5.13.2 above to invite the local community and other interested parties to submit comments or representations; and
 - (c) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.
- 6.11 Short term lease of municipal immovable property:
- 6.11.1 Leases for up to one month (“incidental leases”) and leases in excess of one month up to three years (“short term leases”) shall be approved by the accounting officer. All 3-year leases signed by the Accounting Officer should be formalized and reports quarterly to Council via Portfolio Committee. Leases for a period of longer than three years (“long term leases”) and leases where the value of the immovable property is in excess of R10 000 000-00 (“high value leases”) shall be subject to approval by the Council.
- 6.12 Immovable property may be let out-of-hand 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 maintenance of the immovable property and any improvements thereon.
- 6.13 In the case of a direct lease of immovable property to registered social care organisations/institutions, sports/public facilities or registered non-profit organisations, the rental shall be determined by the Accounting Officer taking into consideration the community value of the lease.
- 6.14 Immovable property let according to paragraph 6.11.1 above need not be advertised in terms of paragraph 5.13.1 and 5.13.2 and need not be subsequently approved by the Executive Mayor, but shall be subject to the following:
- (a) the lessee shall be responsible for all costs regarding the connection of services, service fees and any other costs associated with the lease;
 - (b) the Municipality shall, if it is not prescribed that market related rental must be charged, determine the rental;
 - (c) the lessee shall undertake in writing to compensate the Municipality for damages caused to the immovable property for whatever reason;
 - (d) the lessee shall indemnify the Municipality against any claims; and
 - (e) the Municipality may request proof of financial viability to honour the lease.
- 6.15 The in principle approval of the Accounting Officer must be obtained with any request for the renewal of a lease agreement.

6.16 The Municipality may:

6.16.1 enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and

6.16.2 enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA and the Municipal Public-Private Partnership Regulations.

6.17 Sports facilities and other public amenities may be let out-of-hand to Sports Boards, Sports Federations and other similar bodies. Community based bodies and nonprofessional sporting bodies shall be charged the tariff rentals as approved by council from time to time. Professional sports 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. The market value shall be based on the most likely alternative use for the site.

7. COMPENSATION

7.1 The fair market value for the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable 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 (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude).

7.2 The Municipality, as a rule, bearing in mind the provisions of paragraph 23 and save for those cases mentioned in paragraphs 6.11.1, 7.2, 7.3 and 12.1-12.5 shall not:

(a) let immovable property at a lower rental than market related rental or the rental approved in the tariffs;

(b) 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;

except in cases when the public interest or the plight of the poor demands otherwise and taking into account the provisions of Regulation 13(2) of the MATR, the latter in circumstances of an alienation.

7.3 In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount.

7.4 In the case of a direct lease of immovable property to registered social care organisations/institutions, sports/public facilities or registered non-profit organisations, the

rental shall be determined by the Accounting Officer taking into consideration the community value of the lease.

8. **CONDITIONS OF SALE**

- 8.1 All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.
- 8.2 Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of the alienation of the immovable property, all related costs shall be for the account of the successful bidder/purchaser.
- 8.3 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 Municipality, make such consolidation undesirable.
- 8.4 Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition may 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 a written extension has been granted by the Municipality.
- 8.5 Save with prior approval, the immovable property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations pertaining to such purposes.
- 8.6 The agreement might contain a suspensive condition in respect of immovable property which is sold subject to approval in terms of land use planning legislation.
- 8.7 A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder within 10 days of date of request in writing thereof by the Municipality.
- 8.8 Interest on the purchase price, as from date of signature of the deed of sale, must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser.

9. **CONDITIONS OF LEASE**

- 9.1 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 Municipality 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.

- 9.2 An agreement for the lease of municipal immovable property shall be in writing, stipulating the terms and conditions of the contract or agreement, which shall include provisions providing for:
- (a) the termination of the contract or agreement in the case of non- or underperformance;
 - (b) dispute resolution mechanisms to settle disputes between the parties;
 - (c) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years;
 - (d) any other matters that may be prescribed, and
 - (e) escalation in terms of paragraph 9.5 of this policy.
- 9.3 No immovable property shall be sub-let and no lease may be ceded or assigned without the prior written approval of the Municipality.
- 9.4 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.
- 9.5 Rental, except where it is decided otherwise by the Municipality, shall escalate on the 1st of July every year, by a percentage fixed in accordance with the prevailing consumer price index (all items).
- 9.6 The lessee shall, as a rule, be liable for the payment of rates, taxes and service charges in respect of the leased property. In the case of leases to certain social care users and sports facilities at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the Rates Policy of the Municipality.
- 9.7 The letting of lanes, public open spaces, road reserves and the like can be approved, subject to the following:
- (a) closing off/securing by the lessee of the leased area to the satisfaction and discretion of the Municipality;
 - (b) the Lessee shall be responsible for the cost of relocation or installation of services where required and for the securing of servitudes, and
 - (c) the closure of the lanes, public open spaces and road in terms of the applicable legislation shall be done at the cost of the Lessee.
- 9.8 The lessee shall indemnify the Municipality against any possible claims arising from the lease or use of the immovable property.
- 9.9 Where land is leased for development, a condition, taking into consideration the nature of the development, may be included in the lease agreement stipulating that such development must be completed within two years from date of conclusion of the lease agreement. Likewise a suspensive condition may be included in the lease agreement to provide for cancellation in the

event that the development has not been completed, unless a written extension has been granted by the Municipality.

- 9.10 Save with prior written approval of the Municipality the property may only be used for the purpose for which it was let.
- 9.11 The Municipality shall at all reasonable times be entitled to enter and inspect the immovable property.
- 9.12 Subject to paragraph 9.11 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.
- 9.13 The lessee shall be responsible for maintaining the leased property including all improvements thereon to the satisfaction of the Municipality.
- 9.14 Improvements provided by the Lessee and which the Council wishes to retain, shall revert, free of charge, to the Municipality once the lease period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled. Alternatively, agreement may be reached to the effect that the Lessee may remove any improvements erected from its own funds within three months of termination of the lease agreement, failing which such improvements shall revert to the Municipality free of charge without damage and if provided for in the agreement. The Lessee shall be liable for the cost involved in the removal of such improvements not required by the Municipality.
- 9.15 The Municipality reserves the right, where necessary, to resume immovable property let, or portion thereof, and to cancel an existing lease in its entirety where such immovable property is required for operational purpose or in the interest of the community or for any reason necessitating the cancellation thereof.

10. **ACQUISITION OF IMMOVABLE PROPERTY**

- 10.1 The municipality may acquire by purchase immovable property within- or outside the municipal boundary provided it complies with the requirements of the MFMA and subject thereto that the cost of the purchase has been budgeted for and approved by Council.
- 10.2 The Municipality will not continue with the purchase of any immovable property where the price is in excess of the market value thereof as assessed by a registered valuer. If different market related values are obtained, but similar in nature, the Municipality may negotiate the purchase price taking into consideration the purpose of the acquisition.
- 10.3. The Municipality may accept a donation of immovable property.

11. **SERVITUDES**

- 11.1 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 property. Servitudes result in a burden on the immovable property 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.
- 11.2 If the proposed servitude will result in the immovable property, in discretion of the municipality, being negatively affected, including the impairment of the ability to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude might not be granted.
- 11.3 Subject to paragraph 11.2 above, servitudes may be granted to any person (private or state organ) subject to payment of an appropriate market related compensation by such person provided that in certain circumstances, e.g. where another organ of state requires a servitude for the benefit of the general public or in cases of so called "land locked" property, and subject to the necessary authority having been obtained, the payment to the granting of the servitude, may be waived.
- 11.4 The party requiring the servitude on municipal immovable property is responsible for all costs relating to the granting and registration of the servitude.

12 **LEASES TO INFORMAL TRADERS**

- 12.1 The more formalised informal trading from municipal immovable property, in particular buildings/structures will be from the demarcated areas as gazetted from time to time.
- 12.2 The leasing of municipal immovable property to informal traders may be affected by means of a direct lease on a "first come first serve basis", subject to availability of immovable property, the nature of the trade envisaged, the rental payable and the area the immovable property is situated in.
- 12.3 The Municipality may at any time formulate and implement criteria for the leasing of immovable property for informal trading. In this regard, the Municipality may, amongst others, take the following criteria in consideration:
- (a) The nature of the trading envisaged on the property;
 - (b) The Applicant must be in possession of a valid permit to trade;
 - (c) Where structures are continuously available, informal traders operating four days per week for at least 45 weeks a year will get preference over occasional /casual informal traders;
 - (d) Preference will be given to local residents of the area where the structure is situated;
 - (e) Only one stall will be allocated per household;

- (f) Informal traders who do not already operate in other informal markets within the jurisdiction of the Municipality will get preference; and/or
- (g) Unemployed people will get preference including those traders who demonstrate employment opportunities.
- 12.4 The Municipality will reserve the right to withdraw summarily the allocation of a municipal immovable property in the event of evidence proving that:
- (a) an informal trader has willfully supplied incorrect information;
- (b) an informal trader has failed to update his/her information annually;
- (c) the informal trader has subleased to a third party without the approval of the Municipality;
- (d) the informal trader is contravening the conditions of the lease agreement and/or any other legislation.
- 12.5 The rental payable for the leasing of immovable property situated in the demarcated areas will be determined taking into account the location, structure, services available, products or services rendered and any other diverse circumstances relevant to the lease.
13. **SOCIAL CARE USES**
- 13.1 Social care shall mean services provided by registered welfare, charitable, non-profit, cultural and religious organisations and includes, but is not limited to places of worship, child care facilities, rehabilitation centres, centres for the homeless, elderly and destitute persons and animal care facilities: Provided that they are registered as PBO's or are capable of being so registered should they apply for registration.
- 13.2 Immovable property owned by the Municipality may be alienated or let to social care users. Unless otherwise directed by Council, the purchase price payable shall be 25% of market value subject to a suitable reversionary clause being registered against the title deed of the property. Rentals shall be determined in terms of the tariff rentals as approved by Council from time to time.
- 13.3 Immovable property may be alienated or let out-of-hand to social care users 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 or plight of the poor provided comments or representations on the proposed transfer or granting right to use, control of a municipal capital asset be invited from the local community and other interested persons in terms of Section 7(i) of the Asset Transfer Regulations.
- 13.4 No application shall be processed unless the prescribed application fee as per tariff has been paid, for example. legal, survey, re-zoning, sub-division, consolidations, advertisements, relocation, valuation, provision of services, and/or a deposit as per prescribed tariff to cover incidental costs has been paid.

- 13.5 The following factors shall be considered relevant in the selection and allocation of immovable property to places of worship:
- 13.5.1 The size of the congregation/membership (a minimum membership of 50 people.)
- 13.5.2 Availability of finance to acquire the site and commence with development within five years;
- 13.5.3 Whether or not such a denomination is already represented in the area;
- 13.5.4 Whether or not welfare type facilities/activities will be provided in addition to religious facilities;
- 13.5.5 Whether or not the congregation/membership is drawn from the area in Which a site is being applied for.
- 13.6 Transfer of ownership of viable immovable property arising from an unsolicited bid shall not take place unless the provisions of Section 113 of the MFMA have been complied with.

14 **PROJECTIONS, PROJECTING STRUCTURES AND ENCROACHMENTS**

- 14.1 All costs pertaining to an encroachment shall be borne by the encroacher, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality 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.
- 14.2 The Municipality may, subject to such conditions as it may deem fit –
- 14.2.1 encroachments on road reserves and public thoroughfares in order to encourage adjoining owners to maintain the road reserves adjoining their properties provided inter alia that:
- (a) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects within 1,5 metres measured from the tarred or gravel surface of the road, are not permitted;
- (b) the 1,5 meter area referred to in paragraph 14.2.1(a) may be planted with lawn of a type approved by the relevant directorate of the Municipality or paved at own costs to the satisfaction of the Municipality and subject to the owner of the adjoining property allowing at all times the free movement of pedestrians in those encroached areas;
- (c) no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the encroacher; and
- (d) no encroachment fee shall be charged by the Municipality and no formal agreement need to be entered into in respect of the above encroachment; and

- (e) the Municipality 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 Municipality shall not be liable for any damage to the encroachment which may arise from such inspection, maintenance, repair or installation, or
- 14.2.2 permit the erection or retention of a veranda, balcony, sign, sign-board or similar structure, device or contrivance which projects or extends into, under or over or on any public place, public street or public thoroughfare, provided inter alia that:
- (i) the erection or retention thereof shall not be permitted on the level of more than one floor;
 - (ii) no such projection or structure shall be partially enclosed to a height of more than 1,5 metres measured from the floor level thereof except with the prior written approval of the municipality and subject to such conditions as it may impose,
 - (iii) an annual encroachment fee, determined by the municipality, be levied on successful applicants municipal account for the right obtained to encroach and a formal agreement be entered into in respect of the above encroachment;
 - (iv) the Municipality 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 Municipality shall not be liable for any damage to the encroachment which may arise from such inspection, maintenance, repair or installation; or
- 14.2.3 permit encroachments onto commonage, public open spaces or conservation areas provided inter alia that:
- (a) written applications accompanied with proof of payment of the application fee shall be submitted to the Municipality;
 - (b) the delegated authority, through the Planning & Development, shall:
 - (i) obtain the comments of the relevant municipal directorates/departments;
 - (ii) cause the said application to be advertised in terms of paragraph 10.1 of this policy;
 - (iii) where objections against the said application are received, submit it to the applicant for his/her comment;
 - (iv) submit the application and all relevant documents to Executive Mayor;
 - (v) notify the applicant of the Executive Mayor's decision and where applicable furnish him/her with a copy of any conditions imposed by the Council or its nominee; and
 - (vi) issue a permit (to the successful applicant to give effect to the approval of the application.
 - (c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted;

- (d) no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the adjacent property owner; and
- (e) an annual encroachment fee, determined by Council, be levied on successful applicants municipal account for the right obtained to encroach.
- 14.2.4 permit the enclosure or exclusive use of portions of the commonage, public open spaces, public thoroughfares or any municipal owned immovable property for gardening purposes, provided inter alia that:
- (a) written applications accompanied with proof of payment of the application fee shall be submitted to the Municipality;
- (b) the delegated authority, through the Department & Planning Department, shall:
- (i) obtain the comments of the relevant municipal directorate/departments;
- (ii) cause the said application to be advertised in terms of paragraph 10.1 of this policy;
- (iii) where objections against the said application are received, submit it to the applicant for his/her comment;
- (iv) submit the application and all relevant documents to the Executive Mayor for approval;
- (v) notify the applicant of the Executive Mayor's decision and where applicable furnish him/her with a copy of any conditions imposed by the Council or its nominee; and
- (vi) issue a permit (to the successful applicant to give effect to the approval of the application;
- (c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted.
- (d) a monthly encroachment fee, determined by council, be levied on successful applicants municipal account for the right obtained to encroach.
- 14.2.5 permit the use of municipal land for outdoor seating adjoining a restaurant or for parking of vehicles, provided inter alia that this will be dealt with as a formal lease agreement and the procedure for a lease agreement be followed.
- 14.3 The Municipality 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.

15. EVALUATION

- 15.1 A Land Evaluation Committee shall be established by the Accounting Officer in accordance with annexure "A" hereto, whose function will be to evaluate tenders, auctions, expressions of interest or other bids and objections received in response to any competitive bidding process and to make a recommendation to the Immovable Property Adjudication Committee (IPAC);
- 15.2 IPAC shall make the final award or to make another recommendation to the Accounting Officer as to how to proceed with the relevant transaction, which final award shall at all times be subject to the prior decision and considerations of the Council as referred to in Section 14(2) of the Act (where applicable).
- 15.3 In the event of the termination of any contract concluded pursuant to the application of this policy being cancelled due to a breach thereof by the party to whom the contract was awarded, the particular tender, auction, expressions of interest or other bids may be referred back to the Land Evaluation Committee to re-evaluate such tender, auction, expressions of interest or other bids so as to make an alternate recommendation to IPAC.

16. DISQUALIFICATION

The following persons shall be disqualified from participating in any process for the sale and Transfer and the granting of Rights to Use, Control or Manage Capital Assets:

- 16.1 Persons who have been convicted of fraud or corruption during the period of five years immediately preceding the closing date for advertisements;
- 16.2 Persons who have willfully neglected, reneged on or have failed to comply with a government or local government contract during the aforesaid period of five years;
- 16.3 Persons whose Tax affairs have not been cleared by the South African Revenue Service and who fail to provide a Tax Clearance Certificate in this regard;
- 16.4 Persons who are in arrears (or who have failed to make suitable arrangements with the Municipality to settle such arrears) in respect of any charges payable in terms of Section 118 of the MSA;
- 16.5 Persons who have an actual or likely conflict of interest in relation to the proposed transaction.

17. RESCISSION OF DECISIONS

Where recommendations or decisions giving rise to the awarding or conclusion of contracts have been unlawfully or improperly made, the Municipality shall be entitled to rescind such decisions. The power to rescind such decisions shall be incorporated in tender documents and in contracts finally concluded with tenderers. The power to rescind decisions and to terminate contracts shall extend to decisions that were made, taken or in any way influenced by Councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors as set out in Schedule 1 to the

MSA, or municipal officials in contravention of items 4 or 5 of the Code of Conduct for Municipal Staff Members as set out in Schedule 2 to that Act.

18. DUTIES OF ACCOUNTING OFFICER

The Accounting Officer shall:

- 18.1 implement this Policy;
- 18.2 take all reasonable steps to ensure that proper mechanisms are in place to ensure that the objectives and requirements contained in this Policy are achieved;
- 18.3 notify the Auditor General as defined in Section 1 of the Municipal Finance Management Act, in the event of any bid other than one recommended in the normal course of implementing this Policy being approved and of the reasons for deviating from such recommendation, save that this provision shall not apply if a different bid was approved in order to rectify an irregularity.
- 18.4 be responsible for the appointment of the members of the Land Evaluation Committee and its Chairperson;
- 18.5 appoint an appropriately qualified person to deal with all appeals against recommendations of the Land Evaluation Committee;
- 18.6 be responsible for the management of all contracts concluded pursuant to the implementation of this Policy;

18.7 COUNCIL MAY DELEGATE CERTAIN AUTHORITY

For certain movable assets below a value determined by the council, a council may delegate the authority to decide if an asset is not needed to provide a minimum level of basic municipal service and consider the fair market and economic and community value of that asset, to the Municipal Manager.

It may also delegate to the municipal manager the power to approve in-principle that the asset may be transferred or disposed of (regulation 5(6)). In the case of a municipal entity, the council of the parent municipality may delegate these tasks to the chief executive officer of the entity (regulation 8(6)). When council made such a delegation, the accounting officer will have to make the required regulation 7 or 10 considerations before he/ she will be able to make an in-principle decision.

Regulation 5(6) and 8(6) do not allow the accounting officer to further sub-delegate such a delegation

19. **UNSOLICITED BIDS**

The Municipality shall be entitled, but not obliged, to consider unsolicited bids received outside the processes initiated by the Municipality. To the extent appropriate in each case the principles set out in this Policy will apply, mutatis mutandis, to such unsolicited bids.

- 19.1 An unsolicited bid is a bid that is submitted by a prospective supplier to the municipality without any procurement requirement first having been identified and advertised. This situation arises when a supplier identifies an opportunity to render services or supply products not ordinarily required by the municipality.
- 19.2 In accordance with section 113 of the Act, there is no obligation upon the municipality to consider unsolicited bids received outside a normal bidding process.
- 19.3 The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid but only if -
- a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - b) the product or service will be exceptionally beneficial to the municipality or have exceptional cost advantages;
 - c) the person who made the bid is the sole provider of the product or service concerned; and
 - d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- 19.4 If the accounting officer decides to consider an unsolicited bid that complies with sub-paragraph (3), his decision must be made public in accordance with section 21A of the Municipal Systems Act, together with -
- a) reasons as to why the bid should not be open to other competitors;
 - b) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - c) an invitation to the public or other potential suppliers to submit their comments on the proposal within 30 days of the publication of the relevant notice.
- 19.5 The accounting officer must submit all written comments received pursuant to subparagraph (4), including any responses from the unsolicited bidder, to the National and Provincial Treasuries for comment.
- 19.6 Subject to subparagraphs (7) and (8) below, the adjudication committee must consider the unsolicited bid and may, depending on its delegations, award the bid or make a recommendation to the accounting officer.
- 19.7 A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

- 19.8 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 and Provincial Treasuries.
- 19.9 If any recommendations of the National and Provincial Treasuries are rejected or not followed, the accounting officer must submit to the Auditor-General and the National and Provincial Treasuries the reasons for rejecting or not following those recommendations.
- 19.10 Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.
- 19.11 The processes to be followed by the municipality with regard to the acceptance or rejection of an unsolicited bid shall clearly be made known to the bidder who submits the unsolicited bid concerned.
- 19.12 The council shall exercise caution when interviewing a potential supplier or a person who may wish to offer services to the municipality in circumstance which may be tantamount to the submission of or negotiation with regard to an unsolicited bid and shall not do anything or cause anything to be done which may be contrary to this
20. **POLICY REPEAL**
- The Policy and Procedures for the Disposal of Immovable Capital Assets adopted by the Municipality in April 2018 is hereby repealed.
21. **TITLE OF POLICY**
- This Policy shall be referred to as the Kouga Municipality Policy and Procedures for the Disposal of Immovable Capital Assets.
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SCHEDULE 1

The following procedure shall be followed in relation to the sale and TRANSFER of a NON-EXEMPTED CAPITAL ASSET having a HIGH VALUE to an ORGAN OF STATE or to a PRIVATE SECTOR PARTY

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)
2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)
3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).
5. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 5(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 5(3)(b). Regulation 5(3)(a), Regulation 5(3)(b)
6. The public participation process shall be conducted in accordance with Regulation 5(1)(a) read with Regulation 6 and the publication invitation and solicitation referred to in Regulation 6(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 7. below. Regulation 5(1)(a), Regulation 6

7. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7
8. The Council shall be entitled to furnish its approval referred to in 7. above in principle in accordance with Regulation 11. Regulation 11
9. Any sale and Transfer of the Non-Exempted Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 12, Supply Chain Management Regulation 40, Section 14(5)
10. 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 Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)
11. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. Regulation 16
12. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 18
13. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. Regulation 47
14. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 48

15. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 2

The following procedure shall be followed in relation to the sale and TRANSFER of a NON-EXEMPTED CAPITAL ASSET NOT having a HIGH VALUE to an ORGAN OF STATE or to a PRIVATE SECTOR PARTY

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)
2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public-Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)
3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).
5. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7
6. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. Regulation 11
7. Any sale and Transfer of the Non-Exempted Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 12, Supply Chain Management Regulation 40, Section 14(5)

8. 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 Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)
9. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. Regulation 16
10. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 18
11. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. Regulation 47
12. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 48
13. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 3

The following procedure shall be followed in relation to the sale and TRANSFER of a NON-EXEMPTED CAPITAL ASSET having a HIGH VALUE to a PRIVATE SECTOR PARTY appointed as a service provider through a competitive bidding process in accordance with Chapter 8 of the MSA.

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)
2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)
3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).
5. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 5(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 5(3)(b). Regulation 5(3)(a), Regulation 5(3)(b)
6. The public participation process shall be conducted in accordance with Regulation 5(1)(a) read with Regulation 6 and the publication invitation and solicitation referred to in Regulation 6(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 7. below. Regulation 5(1)(a), Regulation 6

7. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7
8. The Council shall be entitled to furnish its approval referred to in 7. above in principle in accordance with Regulation 11. Regulation 11
9. Compliance with the Disposal Management System referred to in the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality shall not be necessary and direct negotiations may be conducted with the Service Provider. Regulation 12(2) and 12(3)
10. The provisions of Regulations 14 and 15 shall be taken into account. Regulation 14, Regulation 15
11. 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 Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)
12. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. Regulation 16
13. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 18
14. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. Regulation 47
15. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 48

16. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 4

The following procedure shall be followed in relation to the sale and TRANSFER of a NON-EXEMPTED CAPITAL ASSET NOT having a HIGH VALUE to a PRIVATE SECTOR PARTY appointed as a service provider through a competitive bidding process in accordance with Chapter 8 of the MSA.

1. This schedule may not be read as permitting the sale and Transfer of a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)
2. This schedule is not applicable to the sale and Transfer of a Non-Exempted Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)
3. This schedule is not applicable to the sale and Transfer of housing on municipal land and the Transfer of such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).
5. The proposal to Transfer the Non-Exempted Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that the Non-Exempted Capital Asset may be sold and Transferred in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7
6. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. Regulation 11
7. Compliance with the Disposal Management System referred to in the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality shall not be necessary and direct negotiations may be conducted with the Service Provider. Regulation 12(2) and 12(3)

8. The provisions of Regulations 14 and 15 shall be taken into account. Regulation 14, Regulation 15
9. 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 Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)
10. The proceeds received from the sale and Transfer of the Non-Exempted Capital Asset shall be dealt with in accordance with Regulation 16. Regulation 16
11. Any sale and Transfer in accordance with this Schedule shall be effected by a written Transfer Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 18
12. Gains, losses and associated costs not budgeted for that will be incurred in respect of the sale and Transfer shall be dealt with in accordance with Regulation 47. Regulation 47
13. The sale and Transfer of the Non-Exempted Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 48
14. The sale and Transfer shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 5

The following procedure shall be followed in relation to the sale and TRANSFER of an EXEMPTED CAPITAL ASSET NOT needed to provide the minimum level of BASIC MUNICIPAL SERVICES to ORGANS OF STATE.

1. It shall be determined in accordance with Regulation 20 whether Sections 14(1) to 14(5) applies to the particular transaction. Regulation 20
2. Sections 14(1) to 14(5) shall apply to the particular transaction and this Schedule shall not apply where none of the circumstances mentioned in Regulation 20 apply. Regulation 21
3. Where the provisions of Regulation 20(1)(a) apply, Regulation 22 shall be complied with. Regulation 22
4. Before a sale and Transfer of an Exempted Capital Asset to an Organ of State in circumstances described in Regulation 20(1), Regulation 23 shall be complied with. Regulation 23
5. Regulations 25, 26, and 27 shall be complied with. Regulation 25, Regulation 26, Regulation 27
6. The valuation of the Exempted Capital Asset and compensation therefore shall be calculated and agreed in accordance with Regulations 29 and 28. Regulation 29, Regulation 28
7. A written Transfer agreement shall be concluded in relation to the Transfer which shall comply with Regulation 30 and prior to entering into such Transfer agreement the Council must consider the effects referred to in Regulation 31 and the due diligence referred to in Regulation 32 shall have been conducted. Regulation 30, Regulation 31, Regulation 32

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 6

The following procedure shall be followed in relation to the sale and TRANSFER of an EXEMPTED CAPITAL ASSET needed to provide the minimum level of BASIC MUNICIPAL SERVICES to ORGANS OF STATE.

1. It shall be determined in accordance with Regulation 20 whether Sections 14(1) to 14(5) applies to the particular transaction. Regulation 20
2. Sections 14(1) to 14(5) shall apply to the particular transaction and this Schedule shall not apply where none of the circumstances mentioned in Regulation 20 apply. Regulation 21
3. Where the provisions of Regulation 20(1)(a) apply, Regulation 22 shall be complied with. Regulation 22
4. Before a sale and Transfer of an Exempted Capital Asset to an Organ of State in circumstances described in Regulation 20(1), Regulation 23 shall be complied with. Regulation 23
5. The sale and Transfer of an Exempted Capital Asset needed to provide the minimum level of Basic Municipal Services may only be effected on the conditions stipulated in Regulation 24(1) and on condition that the Municipality is satisfied that the Organ of State to which the Exempted Capital Asset is to be transferred can adequately maintain and safeguard the Exempted Capital Asset as envisaged in Regulation 24(2), the Transfer agreement, service delivery or other agreement shall comply with Regulation 24(3) save that this paragraph 5. shall not apply in the circumstances referred to in Regulation 20(1)(c) or (d) relating to the assignment of powers and functions and the Transfer of Municipal housing or land to National or Provincial Organs of State for housing for the poor or in terms of a National or Provincial Housing Policy. Regulation 24(1), Regulation 24(2), Regulation 24(3), Regulation 20(1)(c), Regulation 20(1)(d)
6. Regulations 25, 26, and 27 shall be complied with. Regulation 25, Regulation 26, Regulation 27
7. The valuation of the Exempted Capital Asset and compensation therefore shall be calculated and agreed in accordance with Regulations 29 and 28. Regulation 29, Regulation 28

8. A written Transfer agreement shall be concluded in relation to the Transfer which shall comply with Regulation 30 and prior to entering into such Transfer agreement the Council must consider the effects referred to in Regulation 31 and the due diligence referred to in Regulation 32 shall have been conducted. Regulation 30, Regulation 31, Regulation 32

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 7

The following procedure shall be followed in relation to the granting of a LONG TERM right to USE, CONTROL or MANAGE a CAPITAL ASSET having a FAIR MARKET VALUE in excess of R10 MILLION.

1. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 33(2)(a)
2. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset for housing on municipal land for the poor to beneficiaries of such housing. Regulation 33(2)(b)
3. The value of the Capital Asset shall be determined by a registered value should it be envisaged that such Capital Asset could have a Fair Market Value in excess of R10 Million and should a Long Term (longer than three (3) years) be envisaged. Regulation 34(2)
4. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 34(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 34(3)(b). Regulation 34(3)(a), Regulation 34(3)(b)
5. The public participation process shall be conducted in accordance with Regulation 34(1)(a) read with Regulation 35 and the publication invitation and solicitation referred to in Regulation 35(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 6. below. Regulation 34(1)(a), Regulation 35
6. The proposal to grant the Right to Use, Control or Manage the Capital Asset shall be referred to Council for approval in principle in accordance with Regulation 34(1)(b) in which referral the Council shall be advised of the factors referred to in Regulation 36. Regulation 34(1)(b), Regulation 36

7. The Council shall be entitled to furnish a conditional approval which may be given subject to any conditions including the conditions referred to in Regulation 40. Regulation 40
8. Any grant of a right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 41, Supply Chain Management Regulation 40
9. Prior to granting a right to Use, Control or Manage a Capital Asset, the Municipality shall satisfy itself that the Private Sector Party or Organ of State to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset. Regulation 41(4)
10. Any grant of a right to Use, Control or Manage a Capital Asset shall be by way of written agreement and shall, inter alia, set out the terms referred to in Regulation 45(2)(a) and shall be signed off in accordance with Regulation 45(2)(b). Regulation 45
11. Agreements granting rights to Use, Control or Manage a Capital Asset shall be made available to the Council and shall not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act 2 of 2000. Regulation 46
12. Gains, losses and associated costs not budgeted for that will be incurred in respect of the grant of the right to Use, Control or Manage a Capital Asset shall be dealt with in accordance with Regulation 47. Regulation 47
13. The grant of the right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Capital Asset. Regulation 48
14. The grant of the right to Use, Control or Manage a Capital Asset shall be formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 8

The following procedure shall be followed in relation to the granting of a Right to USE, CONTROL or MANAGE a CAPITAL ASSET where EITHER the FAIR MARKET VALUE of the CAPITAL ASSET does NOT exceed R10 Million or a LONG TERM right is NOT proposed.

1. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 33(2)(a)
2. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset for housing on municipal land for the poor to beneficiaries of such housing. Regulation 33(2)(b)
3. The value of the Capital Asset shall be determined by a registered valuer should it be envisaged that such Capital Asset could have a Fair Market Value in excess of R10 Million and should a Long Term (longer than three (3) years) be envisaged and if such value is found to be in excess of R10 Million and should a Long Term be envisaged, Schedule 7 shall be applied. Regulation 34(2)
4. The proposal to grant the Right to Use, Control or Manage the Capital Asset shall be referred to Council for approval in principle in accordance with Regulation 34(1)(b) in which referral the Council shall be advised of the factors referred to in Regulation 36. Regulation 34(1)(b), Regulation 36
5. The Council shall be entitled to furnish a conditional approval which may be given subject to any conditions including the conditions referred to in Regulation 40. Regulation 40
6. Any grant of a right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 41, Supply Chain Management Regulation 40

7. Prior to granting a right to Use, Control or Manage a Capital Asset, the Municipality shall satisfy itself that the Private Sector Party or Organ of State to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset. Regulation 41(4)
8. Any grant of a right to Use, Control or Manage a Capital Asset shall be by way of written agreement and shall, inter alia, set out the terms referred to in Regulation 45(2)(a) and shall be signed off in accordance with Regulation 45(2)(b). Regulation 45
9. Agreements granting rights to Use, Control or Manage a Capital Asset shall be made available to the Council and shall not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act 2 of 2000. Regulation 46
10. Gains, losses and associated costs not budgeted for that will be incurred in respect of the grant of the right to Use, Control or Manage a Capital Asset shall be dealt with in accordance with Regulation 47. Regulation 47
11. The grant of the right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Capital Asset. Regulation 48
12. The grant of the right to Use, Control or Manage a Capital Asset shall be formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 9

The following procedure shall be followed in relation to the granting of a Right to USE, CONTROL OR MANAGE a CAPITAL ASSET not of a HIGH VALUE

where the right:

- (a) is granted for an indefinite or undetermined period;
 - (b) is granted for a period which exceeds:
 - (b)(i) the useful life of the Capital Asset; or
 - (b)(ii) the economic usefulness of the Capital Asset and which would require the Asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period for which the right is granted; or
 - (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 which, for the purposes of this Policy shall be deemed to apply where the Right to Use, Control or Manage the Capital Asset is a Lease for a period of not less than 10 (ten) years and which Lease provides for the Lease to be notarial registered and for the Lessee to mortgage the Lease.
1. This schedule may not be read as permitting the sale and granting of a Right to Use, Control or Manage a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)

2. This schedule is not applicable to the granting of a Right to Use, Control or Manage a Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)
3. This schedule is not applicable to the granting of a Right to Use, Control or Manage municipal land for housing on such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).
5. The proposal to grant a Right to Use, Control or Manage the Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that a Right to Use, Control or Manage may be granted in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7
6. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. Regulation 11
7. Any grant of a Right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 12, Supply Chain Management Regulation 40, Section 14(5)
8. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to grant a Right to Use, Control or Manage a Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)
9. The proceeds received from the granting of a Right to Use, Control or Manage shall be dealt with in accordance with Regulation 16. Regulation 16

10. Any granting of a Right to Use, Control or Manage in accordance with this Schedule shall be effected by a written agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 18
11. Gains, losses and associated costs not budgeted for that will be incurred in respect of the granting of a Right to Use, Control or Manage shall be dealt with in accordance with Regulation 47. Regulation 47
12. The granting of a Right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 48
13. The granting of a Right to Use, Control or Manage shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 10

The following procedure shall be followed in relation to the granting of a Right to USE, CONTROL OR MANAGE a HIGH VALUE CAPITAL ASSET

where 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 require the Asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period for which the right is granted; or
 - (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 which, for the purposes of this Policy shall be deemed to apply where the Right to Use, Control or Manage the Capital Asset is a Lease for a period of not less than 10 (ten) years and which Lease provides for the Lease to be notarial registered and for the Lessee to mortgage the Lease.
1. This schedule may not be read as permitting the sale and granting of a Right to Use, Control or Manage a Capital Asset needed to provide the minimum level of Basic Municipal Services. Section 14(1) Regulation 4(2)

2. This schedule is not applicable to the granting of a Right to Use, Control or Manage a Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 4(3)(a)
3. This schedule is not applicable to the granting of a Right to Use, Control or Manage municipal land for housing on such municipal land for the poor to beneficiaries of such housing. Regulation 4(3)(b)
4. The value of the Capital Asset shall be determined in accordance with Regulation 5(4), or Regulation 5(5). Regulation 5(4), Regulation 5(5).
5. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 5(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 5(3)(b). Regulation 5(3)(a), Regulation 5(3)(b)
6. The public participation process shall be conducted in accordance with Regulation 5(1)(a) read with Regulation 6 and the publication invitation and solicitation referred to in Regulation 6(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 7. below. Regulation 5(1)(a), Regulation 6
7. The proposal to grant a Right to Use, Control or Manage the Capital Asset shall be referred to Council to make the determinations and to furnish its approval in principle that a Right to Use, Control or Manage may be granted in accordance with Regulation 5(1)(b) read with Sections 14(2)(a) and (b), in which referral the Council shall be advised of the factors referred to in Regulation 7. Sections 14(2)(a)&(b), Regulation 5(1)(b), Regulation 7
8. The Council shall be entitled to furnish its approval referred to in 5. above in principle in accordance with Regulation 11. Regulation 11

9. Any grant of a Right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 12, Supply Chain Management Regulation 40, Section 14(5)
10. If the Municipality on account of the public interest, in particular in relation to the plight of the poor, intends to grant a Right to Use, Control or Manage a Capital Asset for less than its Fair Market Value, the factors referred to in Regulation 13(2) shall be taken into account. Regulation 13(2)
11. The proceeds received from the granting of a Right to Use, Control or Manage shall be dealt with in accordance with Regulation 16. Regulation 16
12. Any granting of a Right to Use, Control or Manage in accordance with this Schedule shall be effected by a written Agreement compliant with Regulation 17 which shall be made available to the Council and public as provided for in Regulation 18. Regulation 17, Regulation 18
13. Gains, losses and associated costs not budgeted for that will be incurred in respect of the granting of a Right to Use, Control or Manage shall be dealt with in accordance with Regulation 47. Regulation 47
14. The granting of a Right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Asset. Regulation 48
15. The granting of a Right to Use, Control or Manage shall be given effect to and formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49, Section 14(5)

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 11

This Schedule shall be applied in respect of the granting of a LONG TERM Right to USE, CONTROL OR MANAGE a CAPITAL ASSET having a value in excess of R10 Million to a PRIVATE SECTOR PARTY or ORGAN OF STATE appointed as a service provider through a competitive bidding process for the performance of a Municipal Service or commercial service.

1. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 33(2)(a)
2. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset for housing on municipal land for the poor to beneficiaries of such housing. Regulation 33(2)(b)
3. The value of the Capital Asset shall be determined by a registered valuer should it be envisaged that such Capital Asset could have a Fair Market Value in excess of R10 Million and should a Long Term (longer than three (3) years) be envisaged. Regulation 34(2)
4. Authorisation shall be sought from the Council to conduct a public participation process in accordance with Regulation 34(3)(a), which request for authorisation shall be accompanied by an information statement as referred to in Regulation 34(3)(b). Regulation 34(3)(a), Regulation 34(3)(b)
5. The public participation process shall be conducted in accordance with Regulation 34(1)(a) read with Regulation 35 and the publication invitation and solicitation referred to in Regulation 35(a) and (b) shall be conducted at least 60 days before the referral to Council alluded to in 6. below. Regulation 34(1)(a), Regulation 35
6. The proposal to grant the Right to Use, Control or Manage the Capital Asset shall be referred to Council for approval in principle in accordance with Regulation 34(1)(b) in which referral the Council shall be advised of the factors referred to in Regulation 36. Regulation 34(1)(b), Regulation 36

7. If the Capital Asset is required to provide the minimum level of Basic Municipal Services, the Right to Use, Control or Manage shall only be granted upon the conditions reflected in Regulation 44(a) and (b). Regulation 44(a) and (b)
8. The Council shall be entitled to furnish a conditional approval which may be given subject to any conditions including the conditions referred to in Regulation 40. Regulation 40
9. Any grant of a right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 41, Supply Chain Management Regulation 40
10. Prior to granting a right to Use, Control or Manage a Capital Asset, the Municipality shall satisfy itself that the Private Sector Party or Organ of State to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset. Regulation 41(4)
11. Any grant of a right to Use, Control or Manage a Capital Asset shall be by way of written agreement and shall, inter alia, set out the terms referred to in Regulation 45(2)(a) and shall be signed off in accordance with Regulation 45(2)(b). Regulation 45
12. Agreements granting rights to Use, Control or Manage a Capital Asset shall be made available to the Council and shall not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act 2 of 2000. Regulation 46
13. Gains, losses and associated costs not budgeted for that will be incurred in respect of the grant of the right to Use, Control or Manage a Capital Asset shall be dealt with in accordance with Regulation 47. Regulation 47
14. The grant of the right to Use, Control or Manage a Capital Asset shall not affect any existing encumbrances, rights and servitudes attached to the Capital Asset. Regulation 48

15. The grant of the right to Use, Control or Manage a Capital Asset shall be formalised in accordance with all applicable legislation and shall be fair, equitable, transparent and competitive. Regulation 49

Reference to a Section refers to a Section of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA).

Reference to a Supply Chain Management Regulation refers to a Regulation of the Municipal Supply Chain Management Regulations published by General Notice 868 of 2005 under the MFMA.

Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

SCHEDULE 12

This Schedule shall be applied in respect of the granting of a Right to USE, CONTROL OR MANAGE a CAPITAL ASSET of a value not more than R10 Million or for a period other than a LONG TERM to a PRIVATE SECTOR PARTY or ORGAN OF STATE appointed as a service provider through a competitive bidding process for the performance of a Municipal Service or commercial service.

1. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset in terms of Public–Private Partnership Agreements referred to in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R309 of 2005. Regulation 33(2)(a)
2. This schedule is not applicable to the granting of a right to Use, Control or Manage a Capital Asset for housing on municipal land for the poor to beneficiaries of such housing. Regulation 33(2)(b)
3. The value of the Capital Asset shall be determined by a registered valuer should it be envisaged that such Capital Asset could have a Fair Market Value in excess of R10 Million and should a Long Term (longer than three (3) years) be envisaged and if such value is found to be in excess of R10 Million and should a Long Term be envisaged, Schedule 7 shall be applied. Regulation 34(2)
4. The proposal to grant the Right to Use, Control or Manage the Capital Asset shall be referred to Council for approval in principle in accordance with Regulation 34(1)(b) in which referral the Council shall be advised of the factors referred to in Regulation 36. Regulation 34(1)(b), Regulation 36
5. The Council shall be entitled to furnish a conditional approval which may be given subject to any conditions including the conditions referred to in Regulation 40. Regulation 40
6. Any grant of a right to Use, Control or Manage a Capital Asset shall be in accordance with the Policy and Procedures for the Disposal of Immovable Capital Assets and Immovable Property Disposal Directives adopted by the Municipality. Regulation 41, Supply Chain Management Regulation 40

7. If the Capital Asset is required to provide the minimum level of Basic Municipal Services, the Right to Use, Control or Manage shall only be granted upon the conditions reflected in Regulation 44(a) and (b). Regulation 44(a) and (b)
8. Prior to granting a right to Use, Control or Manage a Capital Asset, the Municipality shall satisfy itself that the Private Sector Party or Organ of State to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset. Regulation 41(4)
9. Any grant of a right to Use, Control or Manage a Capital Asset shall be by way of written agreement and shall, inter alia, set out the terms referred to in Regulation 45(2)(a) and shall be signed off in accordance with Regulation 45(2)(b). Regulation 45
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Reference to a Regulation refers to a Regulation of the Asset Transfer Regulations published by General Notice 878 of 2008 under the MFMA.

"A"

ANNEXURE A: Kouga Municipality Immovable Property Transfer/Disposal Procedure and Guidelines.

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Introduction

The purpose of this document is to ensure compliance with law – particularly the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA), and the Municipal Asset Transfer Regulations, 2008 (the MATR) – and Kouga Municipality’s policy, and should be read and applied together with the relevant legislation, regulations and policies.

This document provides guidelines to facilitate the fair, equitable, transparent, competitive and consistent management and transfer of the Kouga Municipality’s immovable property. It applies to all immovable property owned by the Municipality, and to all departments, structures, and officials. It serves to assist in and clearly define the process required when considering initiating property transactions relating to the Kouga Municipality’s assets. In doing so it seeks to ensure that all immovable property owned by the Municipality is only transferred or disposed of after the Council, in a meeting open to the public, (a) has decided on reasonable grounds that the capital asset is not needed to provide the minimum level of basic municipal services; and (b) has considered the fair market value of the capital asset and the economic and community value to be received in exchange for the asset.

It is important to understand the interplay between the principles of custodial oversight on the one hand and operational management and control (which includes asset accountability) on the other. Although PD&T is the custodian of Municipality-owned immovable property, Line Departments are responsible for day-to-day management and control of facilities and capital assets under their management.

The following terminology and principles are used as indicated below in this document:

“Asset owner” means the Kouga Municipality

“Capital assets” refers to Municipality immovable property/assets.

“Asset custodian” means the Development & Planning Department.

“Asset User” means the Line Department to which the immovable property has been allocated for operational use. Such department is accountable for the operational management and control of the asset.

“Accountability” and “accountable” mean the responsibility for use, management and control of the immovable property, including but not limited to operations, relationship management, security, maintenance, budgeting, income and expenditure management, and performance reporting relating to the asset in question.

“Disposal” (as defined in the Municipal Asset Transfer Regulations) means demolition, dismantling or destruction of the capital asset.

“Transfer” means loss of title/ownership of the capital asset.

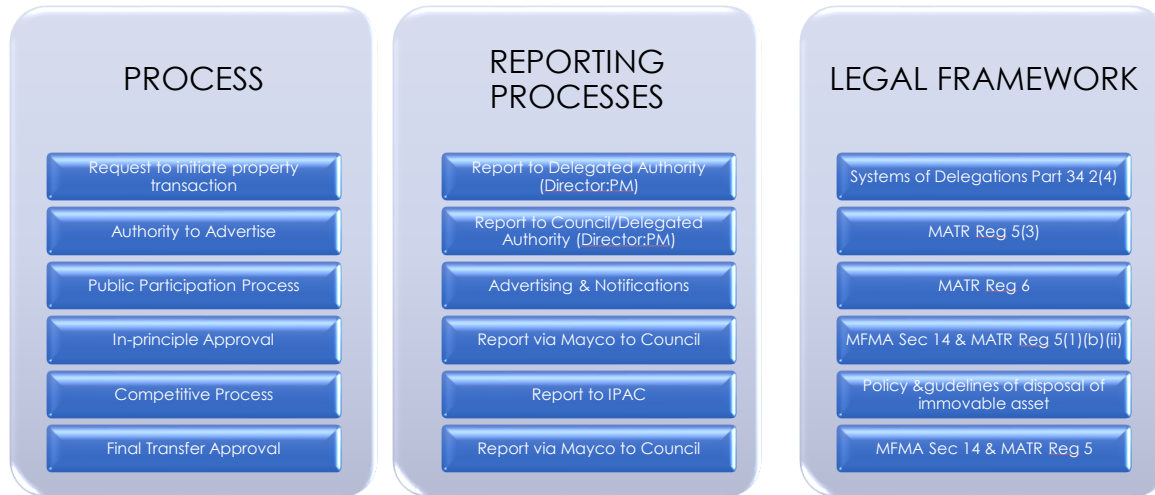
“Non-high value assets” means capital assets which are not of a “high value” as defined in regulation 1(1) of the MATR (i.e. < R50 million).

Should the Line Department no longer need the immovable property for operational requirements, it is required to release or hand over the asset in terms of the Immovable Property Asset Hand-over Protocol to the Planning & Development Department. It should be noted that only the Planning & Development Department as custodian of Municipality immovable property may initiate their transfer/disposal. The Planning & Development Department must investigate the most appropriate treatment for such immovable property. This may include redeployment to another User Department; leasing it out for appropriate use; transfer the asset; its disposal by means of demolition, dismantling, destruction or other means of loss of ownership (other than transfer) if appropriate: provided the chosen treatment is in accordance with the prevailing legislative, regulatory and policy framework, and appropriate in the operative market conditions.

The exception to the above requirement is immovable property falling within the area of responsibility of the Human Settlements department to be used for the delivery of housing for the poor as prescribed in terms of the applicable human settlements legislation (i.e. Housing Act 107 of 1997, Social Housing Act 16 of 2008 and the Social Housing Programme within the National Housing Code). Chapter 2 of the MATR does not apply to the transfer of municipal land for the poor to beneficiaries of housing. Such assets are by law to be provided to the poor based on need and not necessarily based on commercial principles.

When municipal housing or land is transferred to a national or provincial organ of state for housing for the poor then such transfer must be in accordance with Chapter 3 of the MATR, national or provincial housing policy, and is exempted from the supply chain management processes (also see regulation 20 of the MATR). However, the MATR is applicable to any other transfer to provide housing development (for example inclusionary housing, GAP and/or affordable housing) not regulated in terms of the applicable human settlements legislation. The process adopted to effect the applicable transfer should be fair, equitable, transparent and competitive; and consistent with the Kouga Kouga Municipality’s Supply Chain Management Policy.

Legislative and Policy Framework for the Transfer and/or Disposal of Kouga Kouga Municipality's's Capital Assets



The transfer and disposal of the Kouga Municipality's capital assets are governed by the MFMA, the MATR, and the Kouga Municipality's Management of Certain immovable capital assets in terms of its Disposal of Immovable Assets Policy. The transfer of capital assets is subject to sections 14(1)-(5) of the MFMA. In addition to section 14 of the MFMA, the provisions of the MATR, which provides the framework for the implementation of these aspects of section 14, must also be complied with. Below is an overview of the legislative and policy framework applicable to the disposal/transfer of capital assets. It should be noted that the Municipality may only dispose of or transfer capital assets after all the following requirements have been met:

Council's authorisation to conduct the public participation process. Applying for this approval requires submitting a report to Council that must include an information statement containing all the information contemplated in regulation 5(3)(b) of the MATR. Steps in the public participation process involve compliance with regulation 6(a) and (b) of the MATR by the Municipality Manager.

Although it is not a requirement in terms of the MATR to advertise low value assets (< R50 mill), this Policy provides that such public participation process shall be conducted in respect of low value assets.

Following the completion of the public participation process, Council (in a meeting open to the public) must approve in principle that the capital asset may be transferred or disposed of. It is required to make the determinations as set out in sections 14(2)(a) and (b) of the MFMA. Thus, Council must decide on reasonable grounds that the capital asset is not needed to provide the minimum level of basic municipal services; and must consider the fair market value of the capital asset and the economic and community value to be received in exchange for the asset.

Following the steps concerning the conclusion of the mechanism of disposal (tender, auction, call for alternative proposals, including contract negotiations insofar as this is still required and permitted), culminating in the finalisation of the conditions on which the transfer is to occur, Council must grant the final approval for the transfer.

The final approval for the transfer involves the ultimate evaluation of the section 14(2)(a) and (b) considerations. This evaluation must be made with due regard to all relevant considerations, including the final conditions of transfer and current basic service delivery demands at the time of transfer.

Therefore, the final approval must relate to the final conditions of transfer and the factors in terms of regulation 7 of the MATR. Regulation 18 of the MATR also requires the sale agreement to be made available to Council in its entirety and may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act (2000).

Administrative requirements for the line departments to initiate a property transaction or project in respect of Municipality immovable property

The Planning & Development Department is the custodian of the Kouga Municipality's immovable property and must ensure its assets are utilised in accordance with the Kouga Municipality's strategic objectives, legislative framework and the Kouga Municipality's Property Policy and Immoveable Property Asset Management Policy. In order to fulfil the Kouga Municipality's property management objectives, the Municipality has adopted a life cycle model and portfolio management approach in respect of the management of the Kouga Municipality's immovable property. A life cycle model applies to the planning, acquisition, holding and disposal of property.

Line departments are entrusted to ensure that the immovable properties within their span of control

are optimally utilised for operational requirements;

are adequately maintained in accordance with the maintenance plan for the asset;

are maintained according to statutory compliance standards of facilities;

are benefited to improve service standards; and

are rationalized when they confer no further economic or social benefit and are not required for operational purposes.

The initiation of property transactions/projects in respect of Kouga Municipality's immovable property requires the authorisation of the delegated authority. Line departments are required to obtain the authority from the Planning & Development Department to initiate property transactions/projects such

as beneficiation of property, initiating competitive processes, grant rights in property, planning new office builds, infrastructure and capital improvements. However, the exception to this requirement is immovable property which fall within the area of responsibility of the Human Settlements department for the delivery of housing for the poor.

When a line department intends to initiate a property transaction/project (i.e. optimise, commercialise and leverage assets to ensure sustained revenue) in respect of the Kouga Municipality's immovable property, it must engage and obtain approval of the Planning & Development Department as custodian and provide the following:

A detailed business case outlining the need for such property transaction/project;

An indication of the alignment with the Kouga Municipality's strategic objectives embodied in the IDP;

An alignment with the line department's service delivery mandate;

The estimated budget/cost of the property transaction/project; and

An indication of the anticipated impact or outcomes of such property transaction/project.

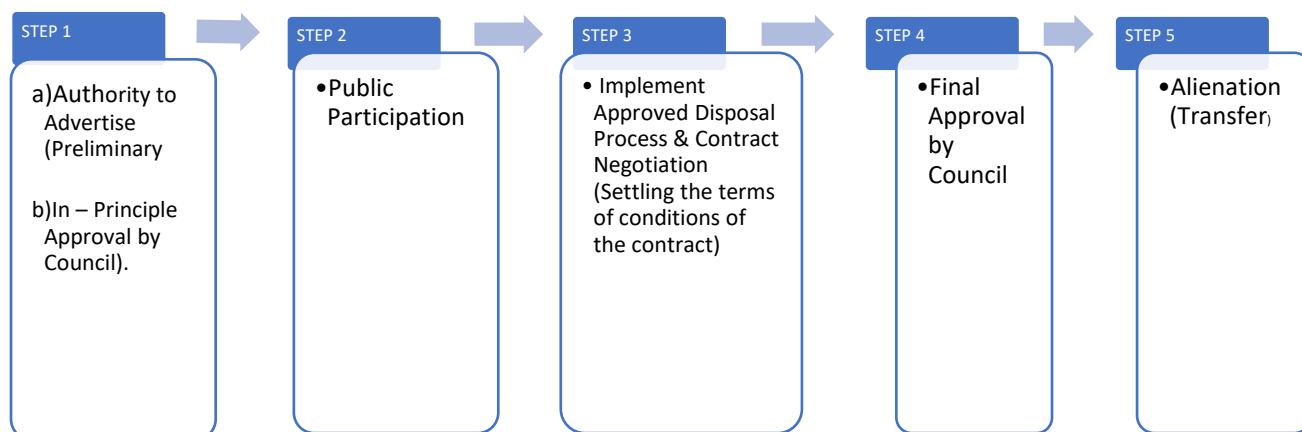
All documentation submitted to the Planning & Development Department by the Line Department must be approved and signed by the relevant Director or nominee.

Following the authorisation to commence such property transaction or project, the Line Department is responsible for complying with the transfer approval steps in Part 4 of this document.

PROCESS PLAN FOR THE DISPOSAL OF THE IMMOVABLE ASSETS:

Approval to transfer Municipality immovable property

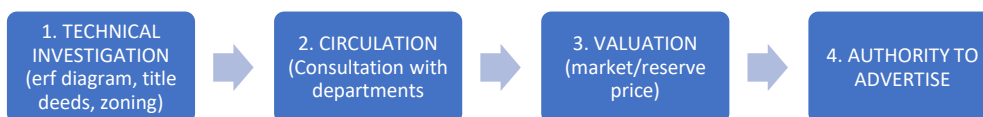
The transfer process consists of various sub-processes or actions, some of which are for operational requirements while others relate to legal or administrative compliance.



Compliance with the above is a legal prerequisite

STEP 1(a): AUTHORITY TO ADVERTISE (ATA)

4.2.1 PROCESS:



conduct a technical investigation (due diligence, ownership, site inspection, zoning, erf diagram, SG noting sheet, etc.);

circulate and consult with internal service departments on property requirements for municipal use or technical services input;

request inputs from external stakeholders such as Eskom and Telkom;

request a property valuation determination from the Finance and or Planning & Development Departments; and

draft report to Council or Delegated Authority to authorize the public participation once all the above information is obtained.

4.2.2 MANDATORY INFORMATION:

In terms of Reg 5(3)(b) of the MATR the following statement needs to be considered by Council and be placed in the advert as part of the public participation process.

Information Statement:

1. Market valuation (fair market value)
2. Method of valuation
3. Reason for proposed transfer
4. Any expected benefits to the Kouga Municipality's
5. Any expected proceeds to be received by the Kouga Municipality.
6. Any expected gains or loss that will be incurred or realised by the Kouga Municipality.

DELEGATIONS:

Authority to conduct public participation – Council Decision

Chapter 2 MATR

Non-delegable in terms of Reg. 5(3)(a) of MATR – high value assets

Non-high value assets delegated to the Municipal Manger

4.3 Step1(b): IN-PRINCIPLE APPROVAL

4.3.1 PROCESS:

draft in-principle report via Mayoral Committee to Council;

Council must decide that the asset is not needed to provide the minimum level of basic services (i.e. provision of water, sanitation, electricity, roads, storm water drainage, transport, emergency housing and essential services);

consider the fair market value; and

consider the economic and community value to be received in exchange for the asset – to be amplified in report based on the individual circumstances of each transaction.

4.3.2 MANDATORY INFORMATION

Council (in a meeting open to the public) must approve in principle that the capital asset may be transferred/disposed of. It is required to make the determinations as set out in sections 14(2)(a) and (b) of the MFMA and in terms of Reg 5(1)(b)(ii) of the MATR to approve in principle that the capital asset may be transferred or disposed of.

In-principle approval is granted based on the consideration of following factors:

Whether the asset is required for the Kouga Municipality's own use

Compensation to be received

Risks and rewards to the Municipality

Any comments, views from National Treasury and the Provincial Treasury

Interest of the community and any comments or views received pursuant to the public participation process

Legal compliance

4.3.3 AUTHORITY/DELEGATIONS:

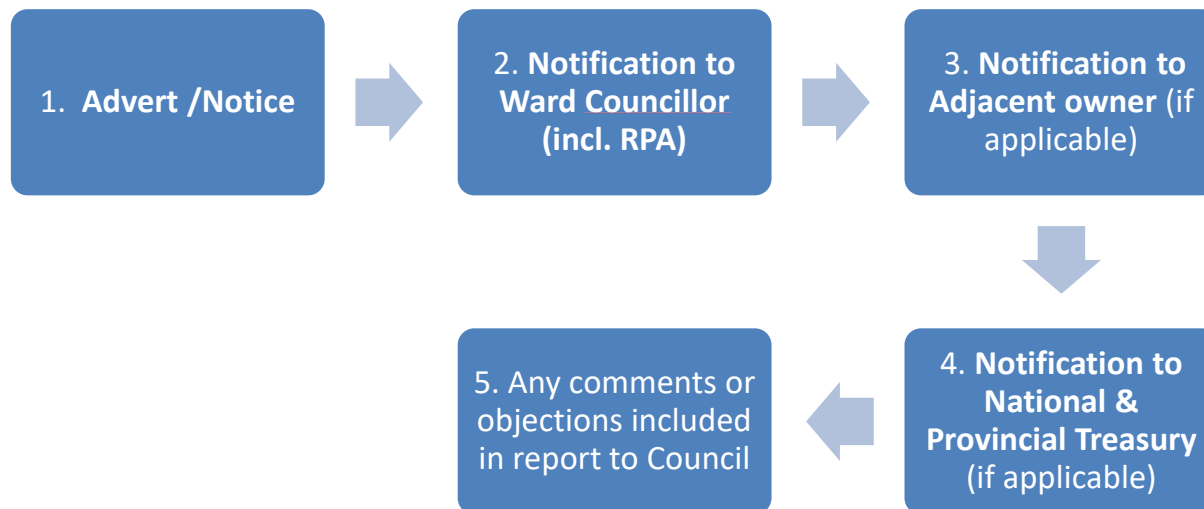
Authority to approve in principle that the asset may be transferred and/or disposed of – Council Decision

Chapter 2 MATR

Non-delegable in terms of Reg. 5(1)(b)(ii) of MATR

STEP 2: PUBLIC PARTICIPATION PROCESS (PPP)

4.2.1 PROCESS:



draft the advert for circulation in Municipal website and local newspapers;

advert must quote the relevant legislation, information statement and any other information as may be determined by the Director: Planning, Development & Tourism;

invite local community and other interested persons to submit comments: send notification toward councillor, relevant homeowners and ratepayers' organisations and display on notice boards; and

where applicable solicit views and recommendations from National Treasury and Provincial Treasury.

4.2.2 MANDATORY INFORMATION

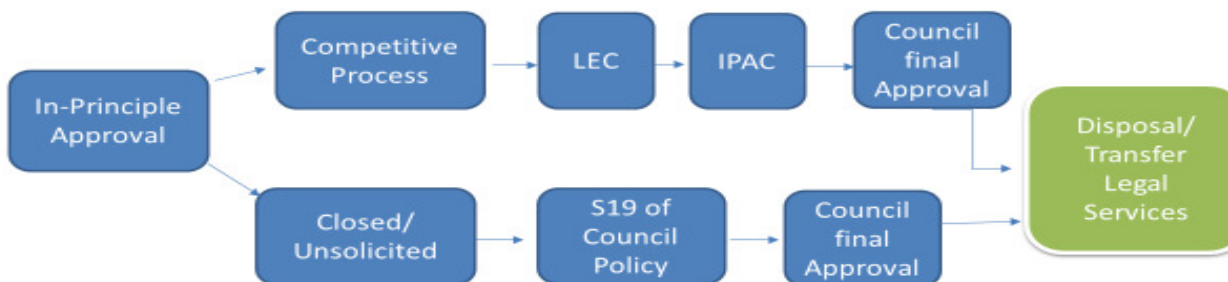
The mandatory requirements can be found in Reg 6(a) and (b) of the MATR. It should be noted that for high-value assets, the public participation must be initiated at least 60 days before the meeting of the Council at which the determinations are to be considered. The advert must include the following information in terms of Reg 5(3)(b) of the MATR.

Information Statement:

1. Market valuation (fair market value)
2. Method of valuation
3. Reason for proposed transfer
4. Any expected benefits to the Kouga Municipality
5. Any expected proceeds to be received by the Kouga Municipality
6. Any expected gains or loss that will be incurred or realised by the Kouga Municipality

STEP 3: IMPLEMENT APPROVED METHOD OF DISPOSAL & CONTRACT NEGOTIATION

Step 3: Implement Approved Method of Disposal



4.4.1 PROCESS:

The Municipality is entitled to use any of the following methods to conclude a property transaction to ensure that the principle of competitiveness is complied with:

Competitive process

Public tender

Public Auction

Closed tender

Where a Competitive bidding process is determined by Council as preferred method of disposal, the following process will commence:

The Tender/ call for proposals will be advertised in the Newspaper and Municipal website.

On Closing of Bids, the Land Evaluation Committee will evaluate tenders according to prescribed criteria and make recommendations to the Immovable Property Adjudication Committee (IPAC);

The Immovable Property Adjudication Committee (IPAC) will consider reports and recommendations from LEC. The IPAC will adjudicate and recommend to the Accounting Officer on award to the compliant preferred bidder.

In terms of the Policy, the Municipality may consider solicited or unsolicited methods in the process of transfer of Municipal owned immovable asset.

Where an unsolicited bidding process is followed, s19 of the policy read with the MFMA will be applicable.

The Municipal Manager may dispense with the competitive process in certain circumstances:

emergency,

immovable property can only be used by the applicant,

applicant is sole provider of service, and

transaction is exceptionally beneficial to the Municipality

Following the competitive process or Municipal Manager deviation, a report is required to be submitted to the Immovable Property Adjudication Committee for consideration of the bids or applications received.

MANDATORY INFORMATION

The Municipality may transfer immovable property only by way of a written sale agreement and may negotiate material terms of the agreement as set out in Reg 17 of the MATR which will be further subject to Council's final approval of the transfer.

The material terms amongst others must include:

a sufficient description of the capital asset being transferred in order to identify the asset;

particulars of any subsidiary assets that are transferred with the capital asset;

particulars of any liabilities transferred with the asset;

the amount of compensation payable to the Kouga Municipality's or municipal entity for the transfer of the asset or assets, and the terms and conditions of payment; and

the effective date from which the risk and accountability for the asset or assets is transferred to the receiving private sector party or organ of state.

If a capital asset is transferred following the selection through a competitive bidding process of a service provider for the performance of a municipal service referred to in regulation 12(2)(a) or for the performance of a commercial service referred to in regulation 12(2)(b) of the MATR, the disposal management system does not apply to the transfer of the immovable property.

4.4.3 DELEGATIONS:

The Immovable Property Adjudication Committee (IPAC) has the authority to adjudicate and recommend for award of immovable property to compliant bidders/purchasers to the accounting officer, subject to final approval by Council and provided that where applicable the:

Public participation process has been conducted,

Sec 14 MFMA determinations have been made by Council,

MATR in-principle approval has been obtained.

STEP 4: FINAL APPROVAL

4.5.1 PROCESS:

draft final transfer report via Mayoral to Council

the final approval involves the ultimate evaluation of the section 14(2)(a) and (b) considerations

this evaluation must be made with due regard to all relevant considerations, including the final conditions of transfer and current basic service delivery demands at the time of transfer

in terms of Reg 18 of the MATR the sale agreement must be before Council in its entirety

4.5.2 MANDATORY INFORMATION:

Council (in a meeting open to the public) must approve the transfer and/or disposal of the capital asset. It is required to reaffirm the determinations as set out in sections 14(2)(a) and (b) of the MFMA and in terms of Reg 5 of the MATR.

The Council must when considering the transfer take into account the following factors in terms of Reg 7 of the MATR:

Whether the capital asset may be required for the Kouga Municipality's own use at a later date;

The expected loss or gain that is expected to result from the proposed transfer or disposal;

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 Kouga Municipality's;

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 Kouga Municipality's interests;

The effect that the proposed transfer or disposal will have on the credit rating of the Kouga Municipality's, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;

Any limitations and 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;

The estimated cost of the proposed transfer or disposal;

The transfer of liabilities and reserve funds associated with the capital asset;

Any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;

Any written views and recommendations on the proposed transfer or disposal by National Treasury and the relevant Provincial Treasury;

The interests of any affected organ of state, the Kouga Municipality's own strategic, legal and economic interests and the interests of the local community; and

Compliance with legislative regime applicable to the proposed transfer or disposal.

4.5.3 DELEGATIONS:

Authority to approve the transfer and/or disposal of assets – Council Decision

Chapter 2 MATR

Non-delegable in terms of Reg 5 of MATR

STEP 5: CONTRACT CONCLUSION & TRANSFER

4.6.1 PROCESS:

The Manager: Legal Services in consultation with Director: Planning, Development & Planning finalizes the terms and conditions of the sale agreement.

The Director: Planning, Development & Tourism sends a request to Legal Services to appoint a conveyancer to effect the transfer.

the Manager: Legal Services ensures all documents received by the conveyancer are signed and completed (i.e. POA, SARS clearance, and any other transfer related documents which might be required to enable transfer).

4.6.2 MANDATORY INFORMATION:

The Municipality may transfer immovable property only by way of a written sale agreement and negotiate material terms of the agreement as set out in Reg 17 of the MATR including Council's final conditions of the transfer which must include the information identified in paragraph 4.4.2 above.

4.6.3 DELEGATIONS:

Acting in terms of section 59 of the Systems Act, Council hereby delegates the following powers, functions and duties to Accounting Officer including the power to sub delegate:

GENERAL

(2) Within his or her functional area and in consultation with Legal Services, to enter into and sign contracts and other documents, with or without financial consequences, where he or she has the necessary authority, or where the necessary approvals and/or authorities have been obtained.

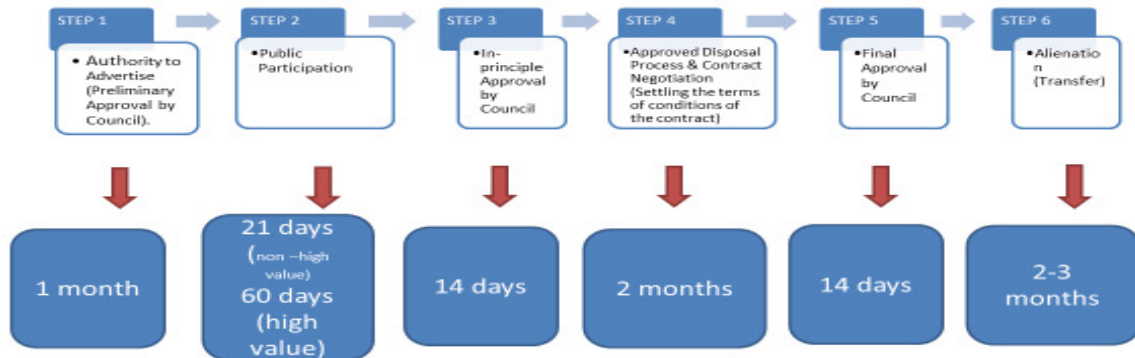
2. PROPERTY MANAGEMENT

Authority to finalise the transaction delegated to Accounting Officer.

To frame the conditions of lease, granting of rights, acquisitions and sales, to execute all documents and rights in connection with the letting, selling and acquisition of capital property, including Power of Attorney.

TIME FRAMES

Proposed Time-Frames



Good Governance through Service Excellence



Committees for management and Disposal of Immovable Capital Assets

LAND EVALUATION COMMITTEE

ESTABLISHMENT

As from a date to be determined by the Accounting Officer there shall be established a Committee to be known as the Kouga Local Municipality Land Evaluation Committee.

CONSTITUTION OF THE COMMITTEE

- 6.1.2.1 The Committee shall consist of not less than five (5) members to be appointed by the Accounting Officer, all of whom shall be Officials, save that the Accounting Officer shall be entitled to appoint an external specialist advisor if deemed appropriate to serve on the Committee and shall ensure, where practicable, the Committee includes at least one (1) senior supply chain management practitioner and at least one (1) technical expert both of whom shall be Officials of the Municipality if the Municipality has such officials.
- 6.1.2.2 No Councillor may be a member of the Committee nor attend any meeting of the Committee as an observer.
- 6.1.2.3 The Accounting Officer shall designate any member of the Committee as Chairperson and any other member as vice-Chairperson who shall act as a Chairperson of the Committee when the Chairperson is absent or is unable to perform his or her duties, and when both the Chairperson and vice-Chairperson are absent from a meeting of the Committee, the members present thereat may elect one of their number to preside at such meeting.
- 6.1.2.4 The term of office of each member shall be at the pleasure of the Accounting Officer.
- 6.1.2.5 If required, any vacancy shall be filled by the appointment of a further member by the Accounting Officer.

POWERS AND DUTIES OF THE COMMITTEE

Having regard to the provisions of Section 14 of the MFMA, the Regulations promulgated thereunder and the powers reserved for a decision by the Municipal Council, the Committee's function shall be to evaluate tenders, contracts or other bids and/or objections thereto in relation to the transfer of and the granting of rights to use, control or manage immovable capital assets by the KLM and to make a recommendation to the Immovable Property Adjudicating Committee.

- 6.1.3.2 The Committee shall be entitled to make such procedural rules as may be appropriate to facilitate their functions and powers provided such rules are not in conflict with the MFMA, the regulations promulgated thereunder, or the Policy.
- 6.1.3.3 The Committee shall not be entitled to determine the nature of any particular type of process adopted in relation to the method of transfer of or the granting of rights to use, control or manage any particular immovable capital asset but shall be obliged to report to the IPAC and make such recommendations as it deems fit should it be of the opinion that any particular type of process adopted in relation to the transfer of or the granting of rights to use, control or manage under

consideration is not fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy.

- 6.1.3.4 In the instance of the evaluation of an unopposed unsolicited bid, the Committee shall, prior to the evaluation thereof, first establish from the Planning, Development & Tourism Directorate of the KLM that the transaction has, prior to submission to the Committee, been advertised for interested parties to participate in competing for the transaction or to object thereto. Should no response to the advertisement for expressions of interest or objections have been received, the unsolicited bid shall be recommended for award by the Accounting Officer subject to Section 14(2) of the MFMA and subject to the Committee being of the opinion that the process followed in relation to the transaction has been in compliance with Section 14(5) of the MFMA.
- 6.1.3.5 Any transaction to be evaluated by the Committee where multiple parties have expressed interest or where objections to the particular transaction have been noted shall be evaluated by the Committee in light of such competing expressions of interest and/or objections subject to the Committee being satisfied that the process followed in relation to the envisaged transaction has been fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy.
- 6.1.3.6 The Committee shall take cognizance of and abide by any pre-qualification criteria imposed in relation to any particular matter under consideration provided such pre-qualification criteria have been open and transparent.
- 6.1.3.7 The Committee shall not consider any contract, tender or bid submitted otherwise than in accordance with approved documentation applicable in each particular instance or in the event of such documentation not having been completed in all required respects.
- 6.1.3.8 The opening, registering and recording of competing contracts, tenders or bids shall take place in public and shall be opened at the same time or as soon as possible after the period for the submission of such competing contracts, tenders or bids has expired.
- 6.1.3.9. The Committee shall be obliged, if required, to read out the names of persons submitting competing contracts, tenders or bids and, if practical, the total consideration offered by such persons in respect of any particular transaction
- 6.1.3.10 The Committee shall exclude contracts, tenders and/or bids submitted by persons where a conflict of interest has been disclosed on the submitted documentation or is apparent and a record of such excluded contracts, tenders and/or bids shall be submitted to the Accounting Officer together with the Committee's recommendation.
- 6.1.3.11 All contracts, tenders and/or bids and objections shall be considered in accordance with the Policy and, where applicable, the Conditions of Tender and, where applicable, the Sworn Statements submitted by interested parties.

- 6.1.3.12 In evaluating any particular transaction the Committee shall take cognizance of:
- The Fair Market Value of the immovable capital asset; and
 - The Fair Market Value of the immovable capital asset as considered in accordance with Section 14(2) of the MFMA should the Municipal Council have already considered the matter in terms of Section 14(2) at the time of its evaluation; and
 - Any perceived interest of the public or the plight of the poor in relation to the specific transaction; and
 - Any economic and/or community value in relation to the transaction or attributed to any person and/or the demands of the public interest or plight of the poor as same may influence the value of the immovable capital asset as determined by the Council of the KLM.
 - Whether the particular transaction has been referred back to the Committee for re-evaluation pursuant to the termination of any recommended award.
- 6.1.3.13 All powers and duties of the Committee shall be conducted by its members impartially and without prejudice and shall be untainted by personal self-interest.
- 6.1.3.18 Where it is the intention of the KLM to acquire an immovable capital asset and the Accounting Officer has confirmed, in writing, that the official procurement processes established in terms of the Supply Chain Management Policy have been dispensed with in accordance with Regulation 36 of the MFMA, the function of the Committee shall be to evaluate the intended acquisition in relation to the Fair Market Value of the immovable capital asset and to confirm, in writing, to the IPAC that it is of the opinion that the intended acquisition and process relative thereto has and will be fair, equitable, transparent and costs effective and shall further make such recommendation as it deems meet in relation to any objections received relative to the intended acquisition.
- 6.1.3.19 Where the official procurement processes established in terms of the Supply Chain Management Policy have not been dispensed with in relation to the intended acquisition, the intended acquisition shall be referred to the IPAC for evaluation.

MEETINGS OF THE COMMITTEE

- 6.1.4.1 The meetings of the Committee shall be held at such times and places as the Chairperson may determine or the Accounting Officer may direct.

- 6.1.4.2 If the Chairperson for any reason does not attend any meeting of the Committee, the Deputy-Chairperson shall preside, whom failing, the members present thereat shall elect one of their number to preside at that meeting.
- 6.1.4.3 The Chairperson, or the other person presiding at a meeting of the Committee, shall determine the procedure at such meeting.
- 6.1.4.4 The decision of the majority of members present at any meeting of the Committee, shall constitute a decision of the Committee.
- 6.1.4.5 Three (3) members of the Committee shall constitute a quorum for any meeting of the Committee.
- 6.1.4.6 In the event of an equality of votes in regard to any matter, the Chairperson of the Committee, or the person elected under subsection (2) as Chairperson for the meeting concerned, shall in addition to his or her deliberative vote have casting vote.
- 6.1.4.7 The proceedings of the Committee shall not be invalid merely by reason of the existence of a vacancy on the Committee.
- 6.1.4.8 Any member of the Committee having a direct or indirect interest in any particular transaction shall immediately disclose such interest to the Chairperson of the Committee and the Accounting Officer in writing and shall withdraw from the sitting of the Committee in relation to the particular transaction and shall have no vote thereat.
- 6.1.4.9 The Accounting Officer shall be entitled to appoint a neutral or independent observer to attend and/or oversee any meeting of the Committee when appropriate to ensure fairness and promoting transparency.

RECOMMENDATIONS OF THE COMMITTEE

- 6.1.5.1 All recommendations of the Committee shall be submitted to the Accounting Officer and, where practical, within three (3) months of closure of any advertisement pertaining to the particular transaction.
- 6.1.5.2 Any recommendation of the Committee shall be based on fairness, equitability, transparency, competitiveness and shall be consistent with the Supply Chain Management Policy.
- 6.1.5.3 All recommendations of the Committee or decisions unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by Councillors in contravention of the Code of conduct for Councillors or Municipal Officials in contravention of the Code of conduct for Municipal Staff Members shall be invalidated by the Accounting Officer.

IMMOVABLE PROPERTY ADJUDICATING COMMITTEE

ESTABLISHMENT

As from a date to be determined by the Accounting Officer there shall be established a Committee to be known as the Immovable Property Adjudicating Committee (IPAC).

CONSTITUTION OF THE COMMITTEE

- 6.2.2.1 The Committee shall consist of not less than five (5) members to be appointed by the Accounting Officer, 4 of which must be senior managers of the Municipality, the Accounting Officer shall be entitled to appoint an external specialist advisor if deemed appropriate to serve on the Committee and shall ensure, where practicable, the Committee includes at least one (1) senior supply chain management practitioner and at least one (1) Senior Legal Official.
- 6.2.2.2 No Councillor may be a member of the Committee nor attend any meeting of the Committee as an observer.
- 6.2.2.3 The Accounting Officer shall designate any member of the Committee as Chairperson and any other member as vice-Chairperson who shall act as a Chairperson of the Committee when the Chairperson is absent or is unable to perform his or her duties, and when both the Chairperson and vice-Chairperson are absent from a meeting of the Committee, the members present thereat may elect one of their number to preside at such meeting.
- 6.2.2.4 The term of office of each member shall be at the pleasure of the Accounting Officer.
- 6.2.2.5 If required, any vacancy shall be filled by the appointment of a further member by the Accounting Officer.

POWERS AND DUTIES OF THE COMMITTEE

Having regard to the provisions of Section 14 of the MFMA, the Regulations promulgated there under and the powers reserved for a decision by the Municipal Council, the Committee's function shall be to consider reports and recommendations of the LEC and;

to make a recommendation to the Accounting Officer to make a final award or to make another recommendation to the Accounting Officer as to how to proceed with the relevant transaction and to

evaluate and make recommendations to the Accounting Officer relative to any intended acquisition of immovable capital assets by the KLM in accordance with 4.17.

- 6.3.3 The Committee shall be entitled to make such procedural rules as may be appropriate to facilitate their functions and powers provided such rules are not in conflict with the MFMA, the regulations promulgated thereunder, or the Policy.
- 6.3.4 The Committee shall not be entitled to determine the nature of any particular type of process adopted in relation to the method of transfer of or the granting of rights to use, control or manage any particular immovable capital asset but shall be obliged to report to the Accounting Officer and make such recommendations as it deems fit should it be of the opinion that any particular type of process adopted in relation to the transfer of or the granting of rights to use, control or manage under consideration is not fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy.
- 6.3.5 In the instance of the evaluation of an unopposed unsolicited bid, the Committee shall, prior to the evaluation thereof, first establish from the Development, Planning & Tourism of the KLM that the transaction has, prior to submission to the Committee, been advertised for interested parties to participate in competing for the transaction or to object thereto. Should no response to the advertisement for expressions of interest or objections have been received, the unsolicited bid shall be recommended for award by the Accounting Officer subject to Section 14(2) of the MFMA and subject to the Committee being of the opinion that the process followed in relation to the transaction has been in compliance with Section 14(5) of the MFMA.
- 6.3.6 Any transaction to be evaluated by the Committee where multiple parties have expressed interest or where objections to the particular transaction have been noted shall be evaluated by the Committee in light of such competing expressions of interest and/or objections subject to the Committee being satisfied that the process followed in relation to the envisaged transaction has been fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy.
- 6.3.7 The Committee shall take cognizance of and abide by any pre-qualification criteria imposed in relation to any particular matter under consideration provided such pre-qualification criteria have been open and transparent.
- 6.3.8 The Committee shall not consider any contract, tender or bid submitted otherwise than in accordance with approved documentation applicable in each particular instance or in the event of such documentation not having been completed in all required respects.
- 6.3.9 The opening, registering and recording of competing contracts, tenders or bids shall take place in public and shall be opened at the same time or as soon as possible after the period for the submission of such competing contracts, tenders or bids has expired.

- 6.3.10 The Committee shall be obliged, if required, to read out the names of persons submitting competing contracts, tenders or bids and, if practical, the total consideration offered by such persons in respect of any particular transaction
- 6.3.11 The Committee shall exclude contracts, tenders and/or bids submitted by persons where a conflict of interest has been disclosed on the submitted documentation or is apparent and a record of such excluded contracts, tenders and/or bids shall be submitted to the Accounting Officer together with the Committee's recommendation.
- 6.3.12 All contracts, tenders and/or bids and objections shall be considered in accordance with the Policy and, where applicable, the Conditions of Tender and, where applicable, the Sworn Statements submitted by interested parties.
- 6.3.13 In evaluating any particular transaction the Committee shall take cognizance of:
- a) The Fair Market Value of the immovable capital asset; and
 - b) The Fair Market Value of the immovable capital asset as considered in accordance with Section 14(2) of the MFMA should the Municipal Council have already considered the matter in terms of Section 14(2) at the time of its evaluation; and
 - c) Any perceived interest of the public or the plight of the poor in relation to the specific transaction; and
- 6.3.14 Any economic and/or community value in relation to the transaction or attributed to any person and/or the demands of the public interest or plight of the poor as same may influence the value of the immovable capital asset as determined by the Council of the KLM.
- 6.3.15 Whether the particular transaction has been referred back to the Committee for re-evaluation pursuant to the termination of any recommended award.
- 6.3.16 The Accounting Officer may at any stage of the process envisaged herein, refer any recommendation of the Committee back to the Committee for reconsideration of the recommendation.
- 6.3.17 Any award of a contract, tender or bid by the Accounting Officer pursuant to a recommendation of the Committee shall be subject to the prior compliance with Section 14(2) of the MFMA.
- 6.3.18 In the event of any dispute in relation to the recommendation of the Committee, the Accounting Officer shall appoint an independent and impartial person not directly involved in the supply chain management processes of the KLM:
- a) to assist in the resolution of such dispute; or
 - b) to deal with any objections, complaints or enquiries regarding the recommendation of the Committee or any matters arising from any particular transaction;

which objections, complaints or enquiries shall be lodged in writing with the Accounting Officer within fourteen (14) days of the recommendation of the Committee or the action objected to.

All powers and duties of the Committee shall be conducted by its members impartially and without prejudice and shall be untainted by personal self-interest.

Where it is the intention of the KLM to acquire an immovable capital asset and the Accounting Officer has confirmed, in writing, that the official procurement processes established in terms of the Supply Chain Management Policy have been dispensed with in accordance with Regulation 36 of the MFMA, the function of the Committee shall be to evaluate the intended acquisition in relation to the Fair Market Value of the immovable capital asset and to confirm, in writing, to the Accounting Officer that it is of the opinion that the intended acquisition and process relative thereto has and will be fair, equitable, transparent and costs effective and shall further make such recommendation to the Accounting Officer as it deems meet in relation to any objections received relative to the intended acquisition.

Where the official procurement processes established in terms of the Supply Chain Management Policy have not been dispensed with in relation to the intended acquisition, the intended acquisition shall be referred to the Acquisition Committee for evaluation.

MEETINGS OF THE COMMITTEE

- 6.4.1 The meetings of the Committee shall be held at such times and places as the Chairperson may determine or the Accounting Officer may direct.
- 6.4.2 If the Chairperson for any reason does not attend any meeting of the Committee, the vice-Chairperson shall preside, whom failing, the members present thereat shall elect one of their number to preside at that meeting.
- 6.4.3 The Chairperson, or the other person presiding at a meeting of the Committee, shall determine the procedure at such meeting.
- 6.4.4 The decision of the majority of members present at any meeting of the Committee, shall constitute a decision of the Committee.
- 6.4.5 Three (3) members of the Committee shall constitute a quorum for any meeting of the Committee.
- 6.4.6 In the event of an equality of votes in regard to any matter, the Chairperson of the Committee, or the person elected under subsection (2) as Chairperson for the meeting concerned, shall in addition to his or her deliberative vote have casting vote.
- 6.4.7 The proceedings of the Committee shall not be invalid merely by reason of the existence of a vacancy on the Committee.

- 6.4.8 Any member of the Committee having a direct or indirect interest in any particular transaction shall immediately disclose such interest to the Chairperson of the Committee and the Accounting Officer in writing and shall withdraw from the sitting of the Committee in relation to the particular transaction and shall have no vote thereat.
- 6.4.9 The Accounting Officer shall be entitled to appoint a neutral or independent observer to attend and/or oversee any meeting of the Committee when appropriate to ensure fairness and promoting transparency.

6.5 RECOMMENDATIONS OF THE COMMITTEE

- 6.5.1 All recommendations of the Committee shall be submitted to the Accounting Officer and, where practical, within three (3) months of closure of any advertisement pertaining to the particular transaction.
- 6.5.2 Any recommendation of the Committee shall be based on fairness, equitability, transparency, competitiveness and shall be consistent with the Supply Chain Management Policy.
- 6.5.3 All recommendations of the Committee or decisions unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by Councillors in contravention of the Code of conduct for Councillors or Municipal Officials in contravention of the Code of conduct for Municipal Staff Members shall be invalidated by the Accounting Officer.

GENERAL

- 7.1 No person shall amend or tamper with any tenders, quotations, contracts or bids after their submission to the Committee.
- 7.2 No person shall interfere with the functioning of the Committee.
- 7.3 The Committee shall, at all times, operate within the framework of the Supply Chain Management Policy.
- 7.4 No member of the Committee shall accept any Gratification, whether directly or indirectly in relation to any transaction evaluated, being evaluated or to be evaluated by the Committee and shall immediately report any offer or proposal of such Gratification or Inducement to the Accounting Officer who shall be entitled to exclude such member from attending any meeting pertaining to the particular transaction or voting thereat.

- 7.5 No member of the Committee shall induce another member to act, evaluate or make a recommendation in any particular manner, nor shall any member offer any Gratification to any other member to act, evaluate or make a recommendation in any particular manner.

IMPLEMENTATION

- 8.1 The Accounting Officer shall ensure that the Committee is timeously established and the members thereof timeously appointed so as to ensure the effective functioning of the Committee.
- 8.2 The Accounting Officer shall take all reasonable steps to ensure that proper mechanisms and separation of duties in the Supply Chain Management System of which the Committee forms a part, are in place to minimize the likelihood of fraud, corruption, favouritism and unfair or irregular practices.
- 8.3 The Accounting Officer shall designate an appropriately qualified person to deal with all Appeals against any recommendation of the Committee, which Appeal shall be noted within fourteen (14) days of the recommendation of the Committee.



C DU PLESSIS
MUNICIPAL MANAGER

29 October 2020

DATE