

REVISED DRAFT FOR PUBLIC PARTICIPATION

**POLICY ON THE MANAGEMENT OF CERTAIN OF THE
CITY OF CAPE TOWN'S IMMOVABLE PROPERTY**

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CHAPTER A: GENERAL

1. Definitions

- 1.1 The following expressions bear the meanings assigned to them below: -
- 1.1.1 “**Calendar Month**” means a period extending from a date in one calendar month to the corresponding date in the following month;
- 1.1.2 “**the City**” means the City of Cape Town, a metropolitan municipality;
- 1.1.3 “**City Manager**” means the City Manager or his or her delegee;
- 1.1.4 “**City’s Property**” or “**Property**” means all the immovable property owned and managed by the City in terms of this Policy;
- 1.1.5 “**Competitive Process**” means a call for alternative proposals, a closed tender, a public tender or a public auction;
- 1.1.6 “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- 1.1.7 “**Disposal**”, notwithstanding the meaning thereof in the MATR, means the transfer of ownership;
- 1.1.8 “**Disposal Management System**” means the disposal management system provided for in Chapter B of this Policy;
- 1.1.9 “**High Value**” means that the fair market value¹ of the Property exceeds R50 million or 1% of the total value of the capital assets of the City as determined from the latest available audited financial statements of the City, or such lower amount as may from time to time be determined by resolution of the Council of the City;

¹ Defined in Regulation 1 of the MATR as “*in relation to a capital asset, 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*”.

- 1.1.10 **“MATR”** means the Local Government: Municipal Finance Management Act, 2003 Municipal Asset Transfer Regulations promulgated in terms of the MFMA and published in *Government Gazette* No. 31346 of 22 August 2008;
- 1.1.11 **“MFMA”** means the Local Government: Municipal Finance Management Act, 56 of 2003;
- 1.1.12 **“Non-Viable Property”** means Property that, owing to urban planning, physical constraints or extent cannot be developed on its own or function as a separate entity and that can therefore become functional only if used by an adjoining owner in conjunction with such owner’s property;
- 1.1.13 **“Organ of State”** means an organ of state as defined in the MATR;
- 1.1.14 **“Preferential Procurement Policy Framework Act”** means the Preferential Procurement Policy Framework Act, 5 of 2000, including any regulations promulgated in terms thereof from time to time;
- 1.1.15 **“the Property By-Law”** means any by-law enacted by the City from time to time relating to the management and administration of the City’s Property;
- 1.1.16 **“the Property Laws”** means the relevant provisions of the MFMA, the MATR and the Property By-Law collectively;
- 1.1.17 **“the Property Policy”** or **“this Policy”** means this policy governing the Management of the City’s Property;
- 1.1.18 **“Property Portfolio”** means a **portfolio** as contemplated in clause 5.5 of this Policy;
- 1.1.19 **“Property Right”** means a right to use, control or manage a Property for a period exceeding a Calendar Month, as granted by the City without ceding legal ownership in the Property. For the avoidance of any doubt, a servitude, way leave or encroachment in, on, over or under Property granted by the City, constitutes a Property Right;

- 1.1.20 **“Property Transaction”** means either a Disposal of Property or the granting of a Property Right;
- 1.1.21 **“Public-Private Partnership”** means a Public-Private Partnership as defined in the Municipal Public-Private Partnership Regulations promulgated under the MFMA and published under GN R309 in *Government Gazette* No. 27431 of 1 April 2005;
- 1.1.22 **“SCM Regulations”** means the Municipal Supply Chain Management Regulations promulgated in terms of the MFMA and published under GN 868 in *Government Gazette* No. 27636 of 30 May 2005;
- 1.1.23 **“Systems Act”** means the Local Government: Municipal Systems Act, 32 of 2000;
- 1.1.24 **“Viable Property”** means Property that can be developed and function as a separate entity capable of registration by the Registrar of Deeds;
- 1.2 Words not defined in this Policy have the meaning assigned to them in the MATR.

2. Property Management Objectives

- 2.1 *The City's property management objectives, in order of priority, are the following: -*
- 2.1.1 *to utilize, reserve and manage the City's Property for its own use, for example, for purposes of municipal offices, as well as for purposes of provision by the City, or by service providers appointed by the City, of municipal services such as water and sanitation, electricity and so forth;*
 - 2.1.2 *to utilize, reserve and manage the City's Property for broader municipal purposes in the interests of the City's local community, for example, in respect of local sports facilities, child care facilities and cemeteries, funeral parlours and crematoria;*
 - 2.1.3 *to manage the City's Property not required for either of the above municipal purposes with due regard to the interests of individual member(s) of the local community, for example, an individual who wishes to lease a Property for purposes of gardening, or who wishes to acquire a Property from the City;*
 - 2.1.4 *to alienate Property only in circumstances where the City is satisfied that it cannot derive a reasonable economic and/or social return from continued ownership of the Property;*
 - 2.1.5 *to acquire immovable property or rights in immovable property for municipal purposes.*
- 2.2 *The City further wishes to ensure consistency, transparency and accountability in the management of the City's Property.*

3. Legislative and Policy Framework for the Management of the City's Property

- 3.1 The legislative framework for the management of the City's Property is contained in a number of pieces of legislation, including but not limited to: -
- 3.1.1 the MFMA, in particular section 14, which deals with disposal of capital assets;
 - 3.1.2 the MATR, which govern: -
 - 3.1.2.1 the transfer and disposal of capital assets by municipalities and municipal entities; and
 - 3.1.2.2 the granting by municipalities and municipal entities of rights to use, control or manage capital assets;
 - 3.1.3 the Property By-Law.
- 3.2 The object of this Policy is to provide a practical framework for the management of the City's Property.
- 3.3 This Policy must be read together and in accordance with the Property Laws.

4. Application of the Policy

- 4.1 Section 14 of the MFMA and the MATR apply to capital assets, which are defined in the MATR to include immovable property, as well as certain movable assets. This Policy only applies to immovable property.
- 4.2 This Policy does not apply to:-
- 4.2.1 immovable property owned by municipal entities in respect of which the City is the parent municipality;
- 4.2.2 immovable property which falls within the area of responsibility of the City's Housing Department;
- 4.2.3 Property owned by the City and subject to a Public-Private Partnership.²
- 4.3 For the avoidance of any doubt, this Policy does not apply to the grant by the City of a right to use, control or manage a Property for a period of a calendar month or less.

² A public-private partnership is defined in the Municipal Public-Private Partnership Regulations as, "a commercial transaction between a municipality and a private party in terms of which the private party –

(a) performs a municipal function for or on behalf of a municipality, or acquires the management or use of municipal property for its own commercial purposes, or both performs a municipal function for or on behalf of a municipality and acquires the management or use of municipal property for its own commercial purposes; and

(b) assumes substantial financial, technical and operational risks in connection with –

(i) the performance of the municipal function;

(ii) the management or use of the municipal property; or

(iii) both; and

(c) receives a benefit from performing the municipal function or from utilising the municipal property or from both, by way of -

(i) consideration to be paid or given by the municipality or a municipal entity under the sole or shared control of the municipality;

(ii) charges or fees to be collected by the private party from users or customers of a service provided to them; or

(iii) a combination of the benefits referred to in subparagraphs (i) and (ii)."

5. Portfolio Management Approach

- 5.1 The City's property management department is the custodian of the City's Property and shall manage the City's Property in accordance with this Policy, including but not limited to, the provisions of Chapter C in respect of the reservation of Property for municipal purposes.
- 5.2 The City's Property comprises some 87 000 immovable assets with diverse and wide ranging uses and users including, for example: municipal offices used by officials, Property used by the City in the course of providing municipal services, Property used by service providers appointed by the City to provide municipal services on its behalf, leases of sports fields, churches, child care facilities and the like.
- 5.3 In order to fulfill the City's property management objectives, and in accordance with international best practice, the City has adopted a life cycle model and **portfolio** management approach in respect of the management of the City's Property. A life cycle model applies to the planning, acquisition, holding (granting Property Rights to third parties or use by the City for municipal purposes) and Disposal of Property.
- 5.4 The City is in the process of compiling a register of its Property which will include a full description of each Property, including but not limited to, the extent, use, planning status and value of the City's Property. In order to facilitate this process, the registration of all Property in the name of the City in the Deeds Registry will be promoted and encouraged.
- 5.5 Each Property will then be assigned to a **portfolio** for management purposes (for example, Investment, Profit-making, Social Care, Municipal Purposes, Special Projects and Surplus) and appropriate life cycle planning will be undertaken in respect of the Properties assigned to each Property **Portfolio**. The City may, from time to time, amend one or more Property **Portfolios** and/or the assignment of a Property to a particular Property **Portfolio**.
- 5.6 In undertaking life cycle planning in respect of a Property **Portfolio**, the City will have due regard to the powers and functions conferred upon municipalities in terms of the Constitution.

6. Property Management Principles

- 6.1 The City has adopted a holistic approach to property management that gives due regard to the following principles: -
- 6.1.1 the best and optimal utilization of a Property;
 - 6.1.2 **portfolio** management principles in terms of which Properties are managed in a manner which is appropriate to the relevant Property **Portfolio**;
 - 6.1.3 transparency, accountability and consistency;
 - 6.1.4 the best interests of the City's local community;
 - 6.1.5 the City's strategic objectives, as adopted from time to time, and as reflected in other policies adopted by the City, such as the City's Integrated Development Plan and the Spatial Development Framework;
 - 6.1.6 the requirement that Property Transactions must be in accordance with a system which is fair, equitable, transparent and competitive;
 - 6.1.7 implementation of the MATR in accordance with the MATR's governing principles of valuation, continuity of service, risk transfer and asset preservation;³
 - 6.1.8 the promotion of preference to persons historically disadvantaged by unfair discrimination;
 - 6.1.9 the use of the City's Property to promote social integration, to redress existing spatial inequalities, to promote economic growth, to build strong, integrated and dignified communities and to provide access to residential opportunities, services, amenities, transport and opportunities for employment;
 - 6.1.10 the management of the City's Property as a sustainable resource, and where appropriate, the leveraging of the environmental, social and economic return on such Property while the City retains ownership thereof.

³ As prescribed in sub-regulation 3 of the MATR.

7. Powers

- 7.1 The City has the powers conferred on it in terms of the Property Laws for purposes of: -
 - 7.1.1 the acquisition by the City of immovable property and rights in immovable property;
 - 7.1.2 Disposal of Property by the City and the granting by the City of Property Rights;
 - 7.1.3 the exercise by the City of such other powers as may be reasonably necessary for, or incidental to, the effective performance of the City's functions

8. Disposals

- 8.1 **Properties not for Disposal** – the City may not Dispose of a Property needed to provide the minimum level of basic municipal services,⁴ save where the Disposal is to another Organ of State, as provided for in section 14(6) of the MFMA read with Chapter 3 of the MATR.
- 8.2 **Exempted Disposals to Organs of State** - In the circumstances prescribed in Chapter 3 of the MATR, Disposals of Property to other Organs of State are exempted from the requirements of sections 14(1)-(5) of the MFMA. Broadly speaking, such Disposals are so exempted where the Disposal is for a public purpose, as opposed to a Disposal in the course of an ordinary commercial transaction between the municipality and the Organ of State (in which case the Disposal does not qualify as an Exempted Disposal).
- 8.3 Where the requirements stipulated in Chapter 3 of the MATR are met, then notwithstanding the fact that a Disposal may be in respect of Property which is required to provide the minimum level of basic municipal services, such Disposals need not comply with the City's Disposal Management System, need not be at market value and do not require the public participation process prescribed in the MATR in respect of non-exempted Disposals.
- 8.4 **Section 14 (Non-Exempted) Disposals** - In respect of Disposals which are subject to sections 14(1)-(5) of the MFMA, the City may Dispose of such Property only after the following requirements are met:-
- 8.4.1 the City, in a meeting open to the public, must have decided on reasonable grounds that the Property is not needed to provide the minimum level of basic municipal services;
- 8.4.2 the City must have considered the fair market value of the Property and the economic and community value to be received in exchange for the Property.

⁴ Defined in the Systems Act as, "a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment".

- 8.4.3 any such Disposal must be in accordance with the principles of fairness, equitability, transparency, competitiveness and cost effectiveness.
- 8.5 In respect of section 14 (Non-Exempted) Disposals, the provisions of Chapter 2 of the MATR, which provides the framework for the implementation of these aspects of section 14 of the MFMA, must also be complied with.

9. Decision-making in respect of Disposals of Property subject to Section 14 of the MFMA

- 9.1 Chapter 2 of the MATR governs Disposals of Property which are subject to section 14 of the MFMA.
- 9.2 This section of the Policy supplements certain aspects of the decision-making process provided for in Chapter 2 of the MATR.
- 9.3 Part 1 of Chapter 2 of the MATR specifies a process for decision-making by a municipality.
- 9.4 The first phase in the process of decision-making is public participation. In terms of the MATR, this phase applies only to High Value Property and includes:-
- 9.4.1 a request to Council, accompanied by an Information Statement,⁵ to authorize the City Manager to conduct a public participation process;
- 9.4.2 the City Manager conducting a public participation process as prescribed in the MATR.⁶
- 9.5 The City may, in its sole discretion, decide to conduct a public participation process in respect of Non-High Value Disposals and may determine the form that this process should take.

⁵ Which must meet the requirements prescribed in sub-regulation 5(3)(b) of the MATR as follows: "A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement stating –

- (i) the valuation of the capital asset to be transferred or disposed of and the method of calculation used to determine that valuation;
- (ii) the reason for the proposal to transfer or dispose of the capital asset;
- (iii) any expected benefits to the municipality that may result from the transfer or disposal;
- (iv) any expected proceeds to be received by the municipality from the transfer or disposal; and
- (v) any expected gain or loss that will be realized or incurred by the municipality arising from the transfer or disposal."

⁶ The City is required, at least 60 days before the Council meeting at which the Council will make the Section 14 Determinations and will decide whether to grant In Principle Approval for the Disposal, in accordance with section 21A of the Systems Act, to make public the proposal to Dispose, together with the Information Statement to invite the local community and other interested persons to submit to the City comments or representations in respect of the proposed Disposal; and to solicit the views and recommendations of National Treasury and Provincial Treasury.

- 9.6 Once the public participation phase of the decision-making process has been completed, Council is required to take decisions in respect of the Disposal.
- 9.7 The first decision which the Council has to make is determinations in terms of section 14 of the MFMA: -
- 9.7.1 on reasonable grounds, that the Property is not needed to provide the minimum level of basic municipal services; and
- 9.7.2 consideration of the fair market value of the Property and the economic and community value to be received in exchange for the Property, in accordance with the compensation provisions of the Disposal Management System;
- ("the Section 14 Determinations").
- 9.8 The second decision that Council has to make, as a consequence of the Section 14 Determinations, is in respect of whether or not to approve in principle that the Property may be Disposed of ("an In Principle Approval").
- 9.9 The MATR prescribes factors that the Council must taken into account when making the Section 14 Determinations and when considering whether to grant an In Principle Approval.⁷

⁷ The factors prescribed in sub-regulation 7 are as follows: "*The municipal council must, when considering any proposed transfer of disposal or a non-exempted capital asset in terms of regulation 5(1)(b)(i) and (ii) take into account – (a) whether the capital assets may be required for the municipality's own use at a later date; (b) the expected loss or gain that is expected to result from the proposed transfer or disposal; (c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality; (d) the risk and rewards associated with the operations or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests; (e) the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowing in the future and its financial position and cash flow; (f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions; (g) the estimated cost of the proposed transfer or disposal; the transfer of any liabilities and reserve funds associated with the capital asset; (i) any comments or representations on the proposed transfer or received from the local community and other interested persons; (j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury; (k) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and (l) compliance with the legislative regime applicable to the proposed transfer or disposal.*"

- 9.10 The City may give an In Principle Approval subject to any conditions, including but not limited to, those specified in the MATR.⁸ If an In Principle Approval is granted subject to conditions, and one of the conditions is not met, the In Principle Approval for the Disposal automatically falls away, and the City is not entitled to Dispose of the relevant Property without obtaining a fresh In Principle Approval.
- 9.11 The MATR do not expressly specify any further decision-making steps to be taken by Council once a municipality has made the Section 14 Determinations and granted an In Principle Approval.
- 9.12 The MATR do, however, specify that a municipality may Dispose of a Property only if such Disposal is in accordance with the Disposal Management System and that it may only commence with disposal management processes once an In Principle Approval has been granted by Council.
- 9.13 In circumstances where a Competitive Process has been followed in accordance with the Disposal Management System after the granting of an In Principle Approval by Council, and where the outcome of the Competitive Process impacts materially on the Section 14 Determinations which Council made prior to the granting of an In Principle Approval, the Disposal shall be referred back to Council.

⁸ The conditions specified in sub-regulation 11 include the following: *“(a) the way in which the capital asset is to be sold or disposed of; (b) a floor price or minimum compensation for the capital asset; (c) whether the capital asset may be transferred or disposed of for less than its fair market value, in which case the municipal council must first consider the criteria set out in regulation 13(2); and (d) a framework within which direct negotiations for the transfer or disposal of the capital asset must be conducted with another person, if transfer or disposal is subject to direct negotiations.”*

10. Property Rights

- 10.1 Chapter 4 of the MATR governs the granting of a Property Right in circumstances where section 14 of the MFMA does not apply.
- 10.2 Regulation 33(3) in Chapter 4 of the MATR specifies the circumstances in which a Property Right must be dealt with as if such granting of a Property right is subject to section 14 of the MFMA or qualifies as a Disposal exempt from Section 14. These include for example situations in which the Property Right:-
- 10.2.1 is granted for an indefinite or undetermined period;
 - 10.2.2 confers upon the person to whom the Property Right is granted an option to buy or acquire ownership in the Property;
 - 10.2.3 is granted in terms of a long-term lease in circumstances where the lease has been structured in such a manner that the lessee is effectively, practically and for all intents and purposes, in the position of an owner, save only that the owner/lessor remains the registered owner of the property.
- 10.3 For purposes of this Chapter:-
- 10.3.1 **“Significant Property Right”** means a Property Right with a value in excess of R10 million which is granted for a period exceeding 3 years.
 - 10.3.2 **“Non-Significant Property Right”** means a Property Right in respect of the following categories of Property: -
 - 10.3.2.1 Property Value less than R10 million, Property Right longer than 3 years;
 - 10.3.2.2 Property Value more than R10 million, Property Right less than 3 years;
 - 10.3.2.3 Property Value less than R10 million, Property Right less than 3 years.
- 10.4 Part 1 of Chapter 4 of the MATR specifies a process for decision-making by a municipality in respect of the granting of a Property Right.

- 10.5 The first phase in the process of decision-making is public participation. In terms of the MATR, this phase applies only to a Significant Property Right and includes:-
- 10.5.1 a request to Council, accompanied by an Information Statement,⁹ to authorize the City Manager to conduct a public participation process;
- 10.5.2 the City Manager conducting a public participation process as prescribed in the MATR¹⁰;
- 10.6 The City may, in its sole discretion, decide to conduct a public participation process in respect of a Non-Significant Property Right, and may determine the form that this process should take.
- 10.7 A public participation process need not be followed only in respect of once-off events in terms of which a Property Right is granted for a period of not more than 90 days and where a Competitive Process would not serve a useful purpose.
- 10.8 Once the public-participation phase of the decision-making process has been completed, a decision must be taken as to whether to grant an In Principle Approval in respect of the granting of the Property Right.
- 10.9 The MATR draws a distinction between a Significant Property Right and a Non-Significant Property Right for purposes of the authority to grant an In Principle Approval: -
- 10.9.1 In respect of a Significant Property Right, only Council has the authority to grant an In Principle Approval;
- 10.9.2 In respect of a Non-Significant Property Right, the City Manager, or if he/she has delegated such a power, his/her delegee, has the authority to grant an In Principle Approval.

⁹ Which must meet the requirements prescribed in sub-regulation 34(1)(b) of the MATR as follows: *“the municipal council has approved in principle that the right may be granted.”*

¹⁰ The City is required, at least 60 days before the Council meeting at which the Council will decide whether to grant an In Principle Approval for the granting of the Property Right, in accordance with section 21A of the Systems Act, to make public the proposal to Grant the Property Right, together with the Information Statement, invite the local community and other interested persons to submit to the City comments or representations in respect of the proposed granting of the Property Right and to solicit the views and recommendations of National Treasury and Provincial Treasury.

- 10.10 The City shall only be entitled to renew a Property Right if the written agreement between the City and the holder of the Property Right expressly includes an option to renew the agreement.
- 10.11 The City shall be entitled to permit the erection or retention of a veranda, balcony, or similar structure which projects or extends into or over any public place or public street in accordance with such requirements as it may from time to time specify in respect thereof.

CHAPTER B: DISPOSAL MANAGEMENT SYSTEM FOR PROPERTY TRANSACTIONS

11. Applicable policies

- 11.1 This chapter of the Policy constitutes the disposal management system of the City in respect of Disposals of Property or the granting of Property Rights by the City.
- 11.2 The City's SCM Policy includes a disposal management system which applies to movable assets and Property. However, the only applicable provisions are those of Regulation 40 of the SCM Regulations, which have been incorporated into this Policy.
- 11.3 For the avoidance of any doubt, save for the chapter dealing with a disposal management system in the City's SCM Policy, the City's SCM Policy applies solely to the procurement by the City of goods and services and not to the Disposal of Property or the granting of Property Rights.
- 11.4 Section 113 of the MFMA and regulation 37 of the SCM regulations do not apply to Property Transactions because the aforesaid provisions also apply solely to the procurement of goods and services.

12. Core Principles

- 12.1 In terms of section 14(5) of the MFMA, a Disposal of Property by the City must be fair, equitable, transparent, competitive and consistent with the City's SCM Policy ("the Core Principles").
- 12.2 The Core Principles do not apply to Disposals of Property to Organs of State in the circumstances prescribed under Chapter 3 of the MATR.
- 12.3 The City shall, unless otherwise permitted to do so in terms of this Policy, also apply the Core Principles to the granting of Property Rights.
- 12.4 By virtue of the Core Principles, as a general rule, whenever Property is Disposed of and/or Property Rights are granted, a competitive process must be followed.

13. Competitive Processes

13.1 General Principles

The City is entitled to use any of the following methods to conclude a Property Transaction to ensure that the principle of competitiveness is given effect to:-

- 13.1.1 Public tender;
- 13.1.2 Public auction;
- 13.1.3 Closed tender;
- 13.1.4 Call for alternative proposals.

13.2 Public Tender

13.2.1 An open and transparent tender process is the most emphatic manner in which to give effect to the Core Principles. Such a process may, depending on the nature of the transaction, include a two-stage bidding process in terms of which only those bidders that meet the pre-qualification criteria specified in the first stage are entitled to participate in the second stage.

13.2.2 Notwithstanding that the Preferential Procurement Policy Framework Act regulations are arguably *ultra vires* the empowering act insofar as they apply to Property Transactions, the City will apply the Preferential Procurement Policy Framework Act when following a competitive bidding process in respect of a Property Transaction.

13.3 Public Auction

Viable immovable property may be alienated by public auction in cases where the City is of the opinion that it is in the interest of the community and the City. The terms and conditions of each auction shall be determined on a project-by-project basis, appropriate to the specific characteristics and attributes of the immovable property, and to the City's strategic objectives. Where the services of an auctioneer are utilized, the auctioneer's commission shall be payable by the successful bidder and shall not form part of the financial offer to the City.

13.4 **Closed Tender**

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

13.5 **Call for Alternative Proposals**

In the event that none of the other 3 competitive methods outlined above are appropriate to the nature of the Property Transaction in question, then the City shall, where none of the circumstances in respect of which a deviation may be granted are applicable, call for alternative proposals in respect of the Property Transaction in question. Examples of circumstances in which a call for alternative proposals may be appropriate include the following:-

13.5.1 **Social care properties/ community sport properties**

In exceptional circumstances where a property to be used for a social care/ community sport purpose has not been reserved in accordance with the processes provided for in Chapter C of this Policy, and where the City's property management department receives an unsolicited application for a Property Transaction, then the following factors may be taken into account in justifying not following a competitive bidding process:-

- 13.5.1.1 whether the applicant has historically enjoyed a Property Right granted by the City and, if so, for how long;
- 13.5.1.2 the terms and conditions of such use,
- 13.5.1.3 the exact nature of the social care or community sport purpose;
- 13.5.1.4 whether the applicant has in the past made improvements to the Property and, if so, the value of such improvements;
- 13.5.1.5 whether or not the City is satisfied with the manner in which the applicant gives effect to the social care or community sport purpose.

13.5.2 **Exceptional circumstances**

In other exceptional circumstances, provided that:-

- 13.5.2.1 pursuant to the Property Transaction, the Property will be used for a public purpose by the City's local community; and/or
- 13.5.2.2 the City is satisfied that the Property Transaction will be exceptionally beneficial to, or have exceptional cost advantages for, the City.

14. Non-competitive processes: Out of Hand/Direct Negotiation

14.1 Non-viable Property

In respect of Non-Viable Property which can only be utilized by one or more adjacent landowners, a Property Transaction(s) may be approved without any competitive process having been followed on the basis that no purpose would be served by a competitive process.

14.2 Viable Property: Deviation from a competitive process

14.2.1 The City Manager may dispense with the competitive processes established in this Disposal Management System, and may enter into a Property Transaction through any convenient process, which may include direct negotiations, but only in the following circumstances:-

14.2.1.1 an emergency; or

14.2.1.2 due to specific circumstances peculiar to the Property under consideration, it can only be utilized by the one person/organization wishing to enter into the Property Transaction; and/or

14.2.1.3 the person wishing to enter into the Property Transaction is the sole provider of the service or product in respect of which the Property will be used and the use of the Property is inextricably linked to the provision of that service or product; or

14.2.1.4 the City Manager is satisfied that the Property Transaction will be exceptionally beneficial to, or have exceptional cost advantages for the City which would not be realized if a Competitive Process were to be followed by the City; or

14.2.1.5 in any other exceptional case where it is impractical or impossible to follow the official competitive process.

14.2.2 Without detracting from the generality of 12.4 above, in the circumstances referred to in 14.2.1.5, due regard shall be had to the Core Principles.

14.2.3 The City Manager must record the reasons for any deviation in terms of this provision and report them to the next meeting of the Council and include them as a note to the annual financial statements.

15. Committee System for Competitive Bids

- 15.1 Where the City Manager deems appropriate, taking into account the nature of the Property Transaction, the City may establish committees for the preparation of bid documents, and the evaluation and adjudication of bids.
- 15.2 Any such committee shall be required to include a representative of the City's SCM department.
- 15.3 No councillor of the City may be a member of any such committee.

16. Criteria for Compensation and Fair Market Value

- 16.1 Property may be Disposed of only at market-related prices, except when the plight of the poor or other public interest factors which impact on the economic and community value to be received by the City demand otherwise.
- 16.2 If the City on account of the public interest, particularly in relation to the plight of the poor, intends to Dispose of a Non-Exempted Property for less than market value it must take into account the factors specified in sub-regulation 13(2) of the MATR.¹¹
- 16.3 Subject to Council's Section 14 Determinations and an In Principle Approval in respect of a specific Disposal, (including taking into account the factors specified in sub-regulation 13(2) of the MATR, and without fettering Council's powers to determine otherwise), the City shall Dispose of social care properties at a purchase price of between 10% and 25% of fair market value subject to a suitable reversionary clause being registered against the title deed of the Property. Such a reversionary clause should oblige the alienee to pay the City the difference between the actual purchase price paid and the fair market value of the Property in the event that the alienee ceases to use the Property for a social care purpose, failing which the City shall be entitled to regain ownership of the Property. The fair market value shall be determined as at the date on which the alienee ceased to use the Property for a social care purpose.
- 16.4 If the City appoints a private sector party or Organ of State through a competitive bidding process as the service provider of a commercial service, the compensation payable to the City in respect of the Disposal of Property as an integral component of the performance of that commercial service to that service provider, shall reflect fair market value.

¹¹ The factors are as follows: "[i]f a municipality or municipal entity on account of the public interest, 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 municipality or entity must, when considering the proposed transfer, take into account – (a) the interests of – (i) the State; and (ii) the local community; (b) the strategic and economic interests of the municipality or municipal entity, including the long-term effect of the decision on the municipality or entity; (c) the constitutional rights and legal interests of all affected parties; (d) whether the interests of the parties to the transfer should carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and (e) whether the local community would be better served if the capital asset is transferred at a less than its fair market value, as opposed to a transfer of the asset at fair market value."

- 16.5 Property may only be let at market-related rates, except when the plight of the poor or other public interest factors which impact on the economic and community value to be received by the City demand otherwise.
- 16.6 In respect of certain categories of Property, the City shall be entitled to adopt below market-related tariffs in respect of Property Rights, for example, properties subject to garden leases, encroachments and social care properties.
- 16.7 The City shall be entitled, in its sole discretion and from time to time, to specify the types of Property Transactions in respect of which applications are permitted to be made to the City and to impose application fees, charges, rates, tariffs, scales of fees or other charges relating to the Property Transaction (collectively “the Charges”).
- 16.8 In such circumstances, the City shall also be entitled not to process the application for the Property Transaction unless the applicant has: -
- 16.8.1 confirmed in writing that it will pay the Charges and bear all such costs in respect of the Property Transactions as the City may require (for example legal costs, survey costs, costs of re-zoning, subdivision, and consolidations, advertising costs, cost of relocation or cost of provision of services); and/or
- 16.8.2 if required by the City, has paid a deposit as specified by the City to cover such incidental costs.

CHAPTER C: RESERVATION OF PROPERTY FOR MUNICIPAL PURPOSES

17. Reservation and service level agreements

- 17.1 The City's property management objectives in respect of Property to be used for municipal purposes, in order of priority, are as follows:
- 17.1.1 to utilize, reserve and manage the City's Property for its own use, for example, for purposes of municipal offices as well as for purposes of provision by the City or by service providers appointed by the City of municipal services such as water and sanitation, electricity and so forth;
- 17.1.2 to utilize, reserve and manage the City's Property for broader municipal purposes in the interests of the City's local community, for example, in respect of local sports facilities, child care facilities and cemeteries, funeral parlours and crematoria.
- 17.2 In order to give effect to the property management objectives in respect of such municipal purposes, the City reserves Property required for such purposes.
- 17.3 In all circumstances where a Property or Properties is/are reserved for a purpose which falls within a functional responsibility of another line department within the City, the City's Property Management Department will enter into a service level agreement (SLA) with that line department.
- 17.4 Examples of types of Property which fall within the functional responsibility of a relevant line department are as follows:-
- 17.4.1 Municipal Resorts:- Sports and Recreation;
- 17.4.2 Parks:- Public Open Spaces;
- 17.4.3 Social Care Properties:- Economic Development and Social Welfare;
- 17.4.4 Sports Facilities:- Sports and Recreation.

- 17.5 An SLA shall regulate the respective roles and responsibilities of the Property Management department and the line department in respect of the reserved Property(ies) and shall, at a minimum, deal with:-
- 17.6 Properties used by the line department itself, for example, where the line department uses the Property(ies) for provision of a municipal service (where the municipal service is provided through an internal mechanism as provided for in the Systems Act);
- 17.7 Properties used by third party service providers, for example, where the line department appoints a service provider to provide a municipal service;
- 17.8 Properties in respect of which the line department has appointed a private party to manage the Property, for example, in terms of Facilities Management agreements.
- 17.9 The SLA's shall include provisions dealing with:-
- 17.9.1 the purpose for which a Property is reserved;
- 17.9.2 a clear description of the purpose for which a private party is being appointed by the City and the private party's contractual obligations in respect of both the purpose of its appointment (such as the provision of the service), as well as in respect of any Property Rights it may have been granted in respect of the Property;
- 17.9.3 the manner in which both the appointment of the private party and the Property Transaction will be procured in accordance with the applicable policy provisions below;
- 17.9.4 the entering into of contract(s) with the private party, and the allocation of the respective responsibilities of the line department and the Property Management Department in respect thereof;
- 17.9.5 the distinct responsibilities of the Property Management Department and the line department in respect of monitoring and oversight of the use, control and management of the Property once the private party has been appointed;

- 17.9.6 the line department's responsibilities in respect of the hand-over of reserved Property back to the Property Management Department once the line department no longer requires the Property for the purpose for which it was reserved.
- 17.10 Given that the City's Property Management Department is the custodian of the City's Property, it is the only department within the City that may conclude a contract with a third party in respect of a Property Transaction. For the avoidance of any doubt, this applies to any contract, irrespective of the description of the agreement (for example, a so-called facilities management agreement) which deals with the granting by the City of a Property Right.
- 17.11 Where it becomes necessary or appropriate to do so, the Property Management Department and the line department shall endeavour to enter into a transaction-specific SLA.

18. Property Transactions as an Integral Component of Selection of a Service Provider

18.1 There are many types of contracts entered into by the City in terms of which the primary purpose of the transaction is the appointment by the City of a service provider and a Disposal or the granting of a Property Right is an integral component of the performance of the service in question.

18.2 Municipal Service or Commercial Service

18.2.1 The MATR includes provisions regulating the manner in which Property Transactions should be dealt with in circumstances where the primary transaction is the appointment of a service provider to perform a municipal service or commercial service.

18.3 For purposes of the MATR:-

18.3.1 a commercial service means a service other than a municipal service rendered by a private sector party or an organ of state to a municipality on a commercial basis and which is procured by the municipality through its supply chain management policy. "*Commercial basis*" is not defined in the MATR;

18.3.2 a municipal service means a municipal service as defined in the Systems Act, namely a service that a municipality in terms of its powers and functions provides or may provide to or for the benefit of the local community irrespective of whether:-

18.3.2.1 such a service is provided, or to be provided, by the municipality through an internal or external mechanism as contemplated in section 76 of the Systems Act; and

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

18.4 In such circumstances, the Disposal Management System does not apply because the primary transaction appointment of the service provider is undertaken pursuant to competitive bidding processes prescribed in the Systems Act and the City's SCM Policy in respect of procurement of goods and services.

- 18.5 The City may therefore negotiate directly with the selected service provider regarding the Property Transaction. In other words, there is no need for the City to comply with the Core Principles by undertaking some form of a competitive process in respect of the Property Transaction.
- 18.6 However, irrespective of how the primary transaction is structured, if the City permits the service provider to use, control or manage Property for purposes of the provision of the municipal or commercial service (whether in terms of a lease agreement, a service provider agreement, a facilities management agreement or otherwise), in terms of the MATR, the City is still required to comply with the public participation requirements as prescribed in the MATR (if applicable) and is still required to make a decision in respect of the underlying or ancillary Property Transaction.
- 18.7 The MATR specify that:-
- 18.7.1 in respect of a Significant Property Rights Transaction, the granting of an In Principle Approval must be taken as an integral part of the broader decision-making process on the appointment of the service provider for the performance of the service (whether municipal or commercial);
- 18.7.2 in respect of Disposals, Section 14 Determinations and In Principle Approvals by Council in respect of High and Non-High Value Properties must be made and granted as part of any broader decision-making process on the selection of a service provider.
- 18.8 If a specific Property is required for purposes of the appointment of a service provider, the City's Property Management Department shall, upon application by the relevant Line Department, reserve the Property for such purpose (if it has not been reserved already) and the two departments will either comply with the provisions of an existing Standard Operating Procedure or enter into a transaction-specific SOP which deals with the respective roles and responsibilities of the Property Management Department and the Line Department in respect of the specific type of proposed transactions (ie the appointment of the service provider and the associated Property Transaction) and the integration of the decision-making and public participation processes in respect of the transactions.

18.9 Social Care Portfolio

18.9.1 One of the City's Property **Portfolios** is Social Care.

18.9.2 Properties within the Social Care **Portfolio** are used for a wide range of social care services provided by organizations such as welfare, charitable, cultural and religious organizations, including but not limited to, the following types of uses:-

18.9.2.1 place of worship to the degree and for that portion of a facility being used for spiritual gathering by, and social/pastoral/mansel/welfare caring and support to worshippers and the broader community;

18.9.2.2 child care facility insofar as it contributes to the functioning of a multi-use childcare facility and is operated on a non-profit basis;

18.9.2.3 retirement villages for that portion of the building or facility available to general public use at subsidized/nominal prices;

18.9.2.4 schools or centres – utilised as homes for the handicapped and disabled persons;

18.9.2.5 non-profit rehabilitation centres;

18.9.2.6 homes/centres for indigent, battered or destitute persons;

18.9.2.7 organisations for the homeless and elderly;

18.9.2.8 youth activity centres;

18.9.2.9 facilities for the accommodation, care and burial of animals;

18.9.2.10 cemeteries, non-profit funeral parlours and non-profit crematoria.

18.9.3 The following factors shall be considered relevant in the selection and allocation of immovable property to places of worship:

18.9.3.1 the size of the congregation/membership;

18.9.3.2 availability of finance to acquire the site and develop same within one year;

- 18.9.3.3 whether or not such a denomination is already represented in the area;
- 18.9.3.4 whether or not welfare type facilities/activities will be provided in addition to religious facilities;
- 18.9.3.5 whether or not the congregation/membership is drawn from the area in which a site is being applied for.
- 18.9.4 Prior to the adoption of this Policy, the City's general practice has been that social care services providers have been selected through property processes managed on a reactive basis by the City's Property Management Department. For example, a person wishing to run a crèche on Property used for such purposes would apply to the City for the granting of a lease and the application would be assessed only on the merits of the property related aspects of the proposed lease. Issues such as whether the Property could be leased to the social care service provider without following a Competitive Process were determined in terms of the applicable property policies.
- 18.9.5 However, in many instances, it would be more appropriate and desirable for the process of the selection of Social Care Service Providers to be undertaken and driven by the line department within the City that has functional responsibility for the relevant type of social care.
- 18.9.6 Even though the appointment of a Social Care Services Provider by the City may not fall within the provision of a municipal or commercial service, wherever possible and practicable, the City will deal with Properties in the Social Care **Portfolio** on a pro-active basis in accordance with the same reservation procedures, including conclusion of SLAs, as set out above.
- 18.9.7 Property may be let only at market-related rates, except when the plight of the poor or other public interest factors which impact on the economic and community value to be received by the City demand otherwise. In respect of social care properties, the City shall determine below-market rentals in terms of an annual tariff.

18.10 **Sports Facilities and Public Amenities Portfolio**

- 18.10.1 One of the City's Property **Portfolios** is sports facilities and public amenities.
- 18.10.2 Certain of the Properties within the sports facilities and public amenities **Portfolio** are used and/or controlled and/or managed on a non-profit, community-based basis, whereas others, such as sports facilities used by professional bodies are used on a commercial, profit-making basis.
- 18.10.3 Wherever possible and practicable, the City will deal with Properties in the sports facilities and public amenities **portfolio** which are not used on a commercial, profit-making basis in the same manner as Properties within the social care **portfolio**.

19. Acquisition of immovable property for municipal purposes

- 19.1 This section of the Policy regulates the internal procedure within the City for the acquisition by the City of immovable property for municipal purposes.
- 19.2 The City may, in terms of the Property By-Law, acquire immovable property and rights in immovable property by purchase, expropriation, donation or otherwise.
- 19.3 The City's Property Management Department undertakes the acquisition (purchase or expropriation) of immovable property (land) and rights in immovable property (servitudes) for municipal purposes on behalf of all the City's service departments, except Housing.
- 19.4 It is the responsibility of the service department to timeously, by a predetermined date as specified by the Property Management Department, advise the Property Management Department of the land or servitudes that are required in a particular financial year. The service department is required to furnish the Property Management Department with the full particulars of the land or servitude required. The particulars required must stipulate the erf or farm number if the entire erf or farm is required, or the coordinates and extent of the land or servitude if a portion of a farm or erf or a servitude is required.
- 19.5 The service department is required to confirm that the acquisition is required for an approved municipal project and that funding has been approved on an approved budget for the payment of the purchase price and the costs that the City will incur when transferring the land or registering the right in the name of the City in the Deeds Registry.
- 19.6 The City will purchase the land or servitude at the market value of the land or servitude as determined by a professional valuer or at such lesser amount as may be agreed to by the seller.
- 19.7 In the case of an expropriation the compensation payable for the land or servitude shall be determined in accordance with prescripts of the legislation in terms of which the land or servitude was expropriated.
- 19.8 Once the immovable property has been acquired, it will be reserved for the municipal purpose for which it was acquired and dealt with in accordance with the reservation procedures outlined above.