



Polokwane Municipality Proclamation R293 Land Administration Policy
2016

Read in line with the

Polokwane Municipal Immovable Property Acquisition, Holding and
Disposal Policy Framework, 2013

Polokwane/Perkesbult Town Planning Scheme 2007

Polokwane Spatial Development Framework, 2011

Spatial Planning and land Use Management Act 16 of 2013

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1. GLOSSARY OF TERMS

Some of the definitions extracted from the Polokwane Municipal Immovable Property Acquisition, Holding and Disposal Policy Framework, 2013.

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| Applicant. | A person or representative of a legal entity who submits an application for a Deed of Grant issued on their R293 property. |
| COGHSTA | The Limpopo provincial Department of Cooperative Governance Human Settlements and Traditional Affairs. |
| Diagram. | A cadastral diagram as defined in the Land Survey Act, 1997 (Act No. 8 of 1997). The diagram is the fundamental registerable document prepared by the land surveyor. The essential information shown on a diagram is the unique description of the property; an illustration depicting the property; the boundary description listing the corner beacons and the details of any curved/ rounded boundary; descriptions of the corner beacons; a table listing the numerical data of the boundaries and the area of the property. The Surveyor-General gives each diagram a unique reference number. |
| Disposal. | Sale, exchange, donation, or letting of Municipal land. |
| DRA. | Deeds Registries Act, 1937 (Act No. 47 of 1937) as amended by the Deeds Registries Amendment Act 2010 (Act 12 of 2010). The purpose of the Act is to regulate the registration of deeds and make uniform the practices of |

each Deeds Registry in the process of registering deeds.

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| DRD&LR. | Department of Rural Development and Land Reform. |
| EEDBS programme. | Enhanced Extended Discount Benefit Scheme was introduced to assist: i) persons to acquire state financed rental housing, ii) existing sales debtors to settle the balance on the purchase price of their public sector properties or iii) persons to repay publicly financed credit that had been used for housing purposes. This programme applies to state financed properties occupied before 1994; not those built under the auspices of the Reconstruction and Development Programme. The programme discounts an amount of up to the prevailing housing subsidy against an existing loan, purchase price or purchase price balance of a property. |
| Engineering Service. | A system for the provision of water, sewerage, electricity, municipal roads, stormwater drainage, gas and solid waste collection and removal, required for the purpose of land development. |
| Erf. | Any piece of land registered as a plot or stand in a Deeds Registry. It can also be a lot or stand in a portion of land laid out for development, but not yet proclaimed as a township. |
| GIAMA. ¹ | Government Immoveable Assets Management Act (Act |

¹GIAMA will be applicable to all spheres government shortly. National and provincial departments are already required to comply with the Act. The necessary legal framework is being debated currently as a precondition for applying GIAMA to the sphere of local government. Requirements for immovable asset management could be incorporated in either a separate set of regulations issued in terms of the Municipal Systems Act , 2000 or an amendment to the Local Government: Municipal Planning and Performance Management Regulations,

No. 19 of 2007). The purpose of GIAMA is: to provide a uniform framework for the management of immovable assets held or used by national or provincial government departments; to ensure the coordination of the use of an immovable asset with the service delivery objectives of a national or provincial department; and, to provide for the issuing of guidelines and minimum standards in respect of immovable asset management by a national or provincial department.

GRAP.

Generally Recognised Accounting Practice. These practices prescribe standards for presenting financial statements, cash flow statements, accounting policies and changes in accounting estimates and errors. They are effective for all public entities using the accrual basis of accounting for annual financial statements.

IDP.

Integrated Development Plan is a strategic management tool for the municipal planning process that guides development within the municipal jurisdiction. It gets adopted by a Municipality in terms of Chapter 2 of the Municipal Systems Act (Act No. 32 of 2000).

Incremental upgrading of informal areas.

The progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside existing planning legislation, and may include any settlement or area under traditional tenure (governed by the National Housing

2001 issued in terms of that Act. Such additions / amendments to the aforesaid Regulations would be issued by the Minister of Cooperative Governance.

Code, Part 3, Incremental Interventions (Consolidation Subsidies, Emergency Housing Programme, Integrated Residential Development Programme and Enhanced Peoples Housing Process) and Upgrading Informal Settlement (Subsidy Quantum – Incremental Interventions). See Proclamation R188 for traditional authority jurisdiction and Proclamation R293 for South African Development Trust (SADT) jurisdiction.

Upgrading of Tenure.

The Upgrading of Land Tenure Rights Act (No. 112 of 1991), provides for the upgrading and conversion into ownership of certain rights granted in respect of land and for the transfer of tribal land in full ownership to tribal authorities and for matters connected therewith. See Proclamation R188 for traditional jurisdiction and Proclamation R293 for South African Development Trust (SADT) jurisdiction.

Land.

An erf, agricultural holding or farm portion.

Land swap or
Exchange.

The simultaneous acquisition and disposal of immovable property or right in land in terms of an agreement between the Municipality and any other party or parties, where the compensation payable by the parties to each other is offset and only the difference, if any, is payable to the appropriate party.

Municipal Area.

The area of jurisdiction of a municipality in terms of the Local Government Municipal Demarcation Act, 1998 (Act No. 27 of 1998).

- MFMA. Municipal Finance Management Act (Act No. 56 of 2003). The purpose of the MFMA is to establish the basis for improved financial management at the local government level. The MFMA aims to modernise budget and financial management practices in municipalities and maximise the capacity of municipalities to deliver services to all their citizens.
- MIG. Municipal Infrastructure Grant. The MIG is a new municipal infrastructure funding arrangement which combines all the existing capital grants (i.e. the Consolidated Municipal Infrastructure Programme, Water Services Projects, Community Based Public Works Programme, Local Economic Development Fund, Urban Transport Fund, Building for Sport and Recreation Programme and the National Electrification Programme) into a single consolidated grant. All R293 townships are currently benefiting from MIG.
- MSA. Municipal Systems Act, (Act No. 32 of 2000). To provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move towards the social and economic upliftment of local communities and ensure universal access to essential services that are affordable to all. The MSA also defines the legal nature of a municipality to include the local community within the municipal area, working in partnership with the municipality's political and administrative structures. More specifically, the MSA brings the IDP in as a mandatory planning document that will integrate and centralise the planning of all municipal sectors and align with national

and provincial policies and plans.

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| NDoHS. | National Department of Human Settlements. |
| Owner. | The person registered in a deeds registry as the owner of the land or the beneficial owner in law. |
| PFMA. | Public Finance Management Act (No. 1 of 1999). The purpose of the PFMA is to regulate financial management in national and provincial government; to ensure that all revenue, expenditure, assets and liabilities of government is managed efficiently and effectively and to provide for the responsibilities of persons entrusted with financial management in those governments. All transactions by private entities are guided by PFMA, implying that disposal of R293 properties must be guided by legislated prices. |
| R188. | Proclamation R188 of 1969, under the authority of the Black Administration Act (No. 38 of 1927) in terms of which tenure in rural areas of South African Development Trust (SADT) land was regulated. Town planning and township establishment in the rural parts of the SADT land was governed in terms of R188. The town planning provisions established procedures for laying out and surveying plots and handing them over to occupiers that conferred rights which are inferior (in terms of tenure law) to those practiced in the former white South Africa. These procedures have persisted in law and regulation for these areas after 1994, and have been incorporated into new |

spatial planning and development rights processes.

R293.

Proclamation R293 of 1962, under the authority of the Black Administration Act (No. 38 of 1927), in terms of which tenure in the denser settlements of South African Development Trust (SADT) land was regulated. Town planning and township establishment in the denser settlements of the SADT land was governed in terms of R293. The town planning provisions established procedures for laying out and surveying plots and handing them over to occupiers that are inferior (in terms of tenure law) to those practiced in the former white South Africa. These procedures have persisted in law and regulation for these areas after 1994, and have been incorporated into new spatial planning and development rights processes.

SDF

Spatial Development Framework. A SDF is compiled to support the development vision, objectives and strategies identified in the Municipality's Integrated Development Plan (IDP). In terms of Section 26 (e) of the Municipal Systems Act (no 32 of 2000) the SDF is a legally required component of the Municipality's IDP. The SDF sets out a more detailed approach to spatial planning for development – and land use management – extending and refining the approach outlined in the IDP. The SDF has a status of a statutory plan and serves to guide and inform all decisions made by the Municipal Council on spatial development and land use management in the area to which it applies.

Title Deed.

Any deed registered in a Deeds Registry recording the

ownership of land or a real right in land.

Township. An area of land divided into erven, including public places and roads indicated as such in a general plan.

Townships register. An approved subdivision register of a township in terms of the Deeds Registries Act (No. 47 of 1937).

1939 Ordinance. Transvaal Local Government Ordinance No. 17 of 1939.

1986 Ordinance Town-planning and Townships Ordinance No. 15 of 1986.

2. BACKGROUND

Polokwane Municipality currently has no policy guiding the administration of proclamation R293 townships, namely Seshego, Mankweng and Sebayeng.

Pietersburg/Seshego Town planning Scheme, 1999 repealed Proclamation R293 for Seshego, Mankweng and Sebayeng are not part of the town planning scheme and therefore not affected by the repeal. It should also be noted that with the promulgation of SPLUMA, land administration within the jurisdiction of the Polokwane Municipality should be uniform. The uniformity will be come to pass with the adoption of SPLUMA by laws.

The identified townships were established in terms of the Proclamation R293 of 1962. By that time it was the only legislation used to **establish, admister, regulate and manage** townships for the Homelands for the bantus. The Town Planning and Township's Ordinanace, 15 of 1986 is now used to establish townships across the nation. The Town Planning Scheme in 1999 repealed the Proclamation R293 in these townships through the Town Planning and Township's Ordinanace, 15 of 1986. The Ordinance is a National Legislation used across the nation. Town Planning and Townships Ordinance, 1986 (Ordinance 15 of 1986): to provide for the management of land use, establishment of towns and the establishment of the Townships Board. Below are extracts from the Proclamation Regulation 293 which provides a link with the Town Planning and Township's Ordinanace:

Whereas the South African Native Trust constituted under section *four* of the Native Trust and Land Act, 1936 (Act No. 18 of 1936), has established and intends establishing further townships for the residence of Bantu on land situate in Bantu areas;

And whereas it is the aim of the Government that a suitable form of local authority should be established for the control of the said townships by the Bantu inhabitants thereof;

And whereas it is expedient that, until the State President is satisfied that the Bantu inhabitants have attained such degree of development as to warrant the introduction of such form of local government, interim regulations should be promulgated for the control of the said townships;

And whereas it is expedient to provide for the establishment of deeds registries and the registration of deeds in respect of land in such townships;

Now, therefore, under and by virtue of the powers and authorities vested in me by sub-section (2) of section *six* and sub-section (1) of section *twenty-five* of the Native Administration Act, 1927 (Act No. 38 of 1927), read in conjunction with section *twenty-one* of the Native Trust and Land Act, 1936 (Act No. 18 of 1936), I hereby declare that the regulations set out in the Schedule hereto shall take effect and have the force of law in any such townships.

land.

Establishment of Townships.

4. (1) The Minister may by notice in the *Gazette* define and set apart any one or more townships for the occupation, residence and other reasonable requirements of Bantu, either as extensions of any township already defined for that purpose or as separate townships.

(2) Any area defined as a rural village or township by notice under any of the regulations repealed by regulation 2 of this chapter, shall be deemed to have been defined as a township under sub-regulation (1) and notwithstanding the repeal of such regulations, such definition shall continue to exist and such notice shall be deemed to have been issued under sub-regulation (1).

Proclamation R293 was intended to be a temporary legislation applicable "until the State President is satisfied that Bantu inhabitants have attained such degree of development ..." It is argued that the Constitution of the Republic of South Africa, Act 106 of 1996 brought an end to racial segregation.

The extract talks about the establishment of Townships in terms of the Regulation 293, Seshego has since been incorporated into the Town Planning Ordinance area when the Proclamation R293 was repealed in 1999 by the Town Planning Scheme. This means that it is now a Township in terms of the Town Planning and Townships Ordinance, same as the Polokwane extension 72, 79, 71, 40 and 44. Properties in the extensions are sold at market prices and not using the R293 rates because they were established in terms of the Town Planning Ordinance. The same now applies for Seshego because the Proclamation R293 was repealed by the Town Planning

and Township's Ordinance. This implies that R293 no longer exists in Seshego as the Township is now within the Scheme area and the Ordinance area.

Subdivision of land versus Demarcation of sites

Demarcation of Sites.

3. The Bantu Affairs Commissioner may demarcate or cause to be demarcated or set aside in the township, sites for residential, professional, trading, church, mission, school or public purposes, including public places, roads, streets and thoroughfares, in accordance with general plans and diagrams approved by the Secretary, and shall cause to be erected beacons, pegs or other indicators defining the limits of such sites and public places.

Demarcation of sites is no longer applicable in Seshego. Sites are being subdivided in terms of section 92 of the Town planning and Township's Ordinance, 15 of 1986.

Submission of Building Plans, amendment scheme and consent use applications

(3) Any person desirous of obtaining a building permit shall apply to the superintendent on a form substantially the same as Schedule J to these regulations and shall—

(a) indicate in his application the material which will be used and the purpose for which the structure is intended to be used;

(b) attach to the application, drawings to scale, in duplicate, showing plans, sections and elevations of the proposed structure and of its situation in relation to the relevant site: Provided that—

(i) no structure other than one family housing unit with the normal outbuildings shall be erected on any one site;

(ii) every dwelling, building, outhouse or other structure shall be in accordance with specifications approved by the superintendent;

When a building plan is submitted for Seshego, it is assessed in terms of the Scheme in operation, if it was still a Proclamation R293 township; it was going to be assessed as such. The application fees applicable are determined in terms of the Town Planning Ordinance.

Use of Site.

13. No trader shall without the prior written approval of the manager use the trading site allotted to him for any purpose other than that for which it was allotted to him by the Trust.

The same applies for rezoning (amendment scheme) or consent use applications, for Seshego, they are assessed in terms of the Scheme in operation. The application fees applicable are that as determined in terms of the Town Planning Ordinance. Land use rights applications in the R293 townships are free of charge...

Should property sales in Seshego be determined in line with Proclamation R293 rates?

Let us consider the below factors which impact on property prices:

a) Rates and Taxes applicable.

How property rates are calculated (Act 6 of 2004 Section 11)

- ✓ The amount payable is calculated by multiplying the market value of the property by a cent amount in the rand that a municipal council determines.
- ✓ The tariff is determined by the municipality in terms of their tariff policy.

What is the market value of vacant land in Seshego if the regulation is still applicable, and how much will be applicable for rates and taxes?

b) Rezoning

Properties in R293 towns are rezoned free of cost whereas, Seshego properties are rezoned as per Town Planning and Township's Ordinance, 15 of 1986 determined rates.

Question: Why would it cost so much to rezone a property if it cannot be sold at a quarter of the cost for rezoning it. It is logical to conclude that Proclamation R293 was replaced by the Town Planning and Township's Ordinance, 15 of 1986 at Seshego. The uniform, comprehensive and effective system of land use management within the other townships should apply.

3. INTRODUCTION

The Proclamation R293 Land Administration Policy reflects the methodology and procedures for the sale and letting of various types of properties within these townships.

It is important to note that the focus of the policy guidelines is on the Property Acquisition, Management and Disposal processes, which are conventionally referred to under the heading of 'Property Management'.

In compiling this policy document, the following acts have been taken into consideration:

- Municipal Finance Management Act (Act No. 56 of 2003).
- The Constitution of the Republic of South Africa (Act No 108 of 1993).
- Municipal Systems Act (Act No. 32 of 2000, as amended).
- Municipal Structures Act (Act No. 117 of 1998).
- Municipal Property Rates Act (Act No. 6 of 2004).
- Other relevant legislation.

4. Policy AIMS:

The following policy aims should be considered:

- Eradication of apartheid space;
- Equitable access to land;
- Ensuring full ownership and rights in land especially for marginalized groups;
- Proper administration of municipal immovable property;

5. DEVELOPMENTPRINCIPLES

The key principles of the policy is to ensure the following:

- 5.1. Promote PDI participation in property development, management, investment employment, commercial and residential
- 5.2. Build strong and integrated communities
- 5.3. Redress spatial inequalities
- 5.4. Promote access to services, amenities, transport and employment
- 5.5. Build a competitive advantage for HDIs in terms of market entry and participation
- 5.6. Encourage and foster broad based empowerment in terms of distribution of ownership, labour, participation, capital, skills development, equity participation and end user benefit
- 5.7. Further the objectives of the municipality's integrated development plan
- 5.8. Encourage flexibility and creativity in these areas to address the changing needs and priorities of the municipality, in particular the needs of the poor
- 5.9. Promote access by the HDIs to the social and economic benefits of property management, development and use
- 5.10. Encourage the use of property management as a catalyst for local and social development

5.11. The Principles of Financial and Administrative Sustainability:

- Where the following circumstances DO NOT warrant the application of market prices:
 - When a municipal property is classified as one that meets the objectives for Spatial Reconstruction. For example, in the political transition, land from the former non-independent homeland of Lebowa (i.e. the former R293 towns) was donated to the Polokwane Municipality by the Department of Public Works (DoPW) to facilitate the transition of Lebowa into the South African legislative and administrative system; and,
 - Within the above category of land/properties the Polokwane Municipality's City Planning and Property Management Strategic Business Unit (SBU) is responsible for facilitating the Deed of Grant registration process with CoGHSTA for those

R293 properties which do not qualify for the Extended Expanded Discount Benefit Scheme (EEDBS).

5.12. Guiding Principles for Disposal of Properties to Facilitate Sustainable Growth and Development:

- Continuity
- Financial viability
- durability
- affordability

5.13. Guiding Principles In Relation to the Disposal of Municipal Property:

The requirement of Section 14 of the MFMA in respect of the disposal of capital assets:

- A municipality may not transfer ownership as a result of a sale or other transaction or permanently dispose of a capital asset (immovable assets such as land, buildings and installations that cannot be moved without changing its identify) that is needed to provide the minimum levels of basic municipal services;
- A municipality may transfer ownership or dispose of a capital asset other than one contemplated above, but only after the municipal council in an open public meeting has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services and has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset;
- A Municipal decision that a specific capital asset is not needed for the provision of basic municipal services may not be reversed by the municipality after that asset has been sold, transferred or disposed of;
- Any transfer of ownership of a capital asset must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111 of the MFMA.

5.14. Requirements of the Polokwane Municipality Supply Chain Management Policy

Promotion of the objectives of the Broad-Based Black Economic Empowerment Act and the application of the Preferential Procurement Policy Framework where:

- Preference is given in terms of the disposal of viable immovable properties as embodied in Section 9(2) of the Constitution of the Republic of South Africa, 1996; and,
- Municipal land and property put up for lease or sale has the potential to create new opportunities for emerging contractors, lessees and purchasers in an equitable, fair and transparent way:
 - The municipality aims to spread opportunities for development, lease and purchase to as broad a range of SMME's as possible:
 - This could be done by specifying that preference would be given to individuals and SMME companies that have not as yet benefitted from municipal property opportunities in the form of construction, leasing or purchase, or benefitted only marginally. Partnerships between PDI's and established developers, lessees and purchasers could also be entertained.
 - Where the free transfer of R293 properties to households not benefiting from the Extended Discount Benefit Scheme operates on the principle of equity wherein only one R293 property is transferred to each household. Only when all eligible households have had one property transferred to them should households be able to apply for a second R293 property.
 - The disposal of any and all capital assets must be dealt with in accordance with the provisions of section 14 of the MFMA;

- Adjudication of disposals will be conducted in terms of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), and the following formula will be applied:
 - the 80/20 or 90/10 preference point system for the sale and letting of assets, with the 80/20 formula applying to a value below R1 Million and the 90/10 formula to values above R1 Million;
 - Both the 80 and 90 points in the case of an open tender, can be further divided into points for functionality and price, provided that tender documents contain a detailed breakdown of the points that will be awarded for various criteria.
- The Municipal Council will dispose assets using the following ways -
 - Transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - Selling the asset at market related price or auction; and
 - Disposing the asset:
 - A municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal service; and,
 - A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection 7.2 (above) but only after the municipal council, in a meeting open to the public has decided on a reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services.
 - Following are conditions under which the capital assets may be sold:
 - Immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;

- Only the executive committee or executive mayor will recommend to Council decision to expropriate immovable property or rights in or to immovable property;
 - All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property must be annually reviewed.
- Sale out of hand:
 - Whenever a number of comparable immovable properties are offered for sale or lease by public competition and there are remaining properties unsold or not leased after the tendering process, the remaining properties may be sold or leased out of hand by the Municipality at the average realised price obtained for properties sold or leased in the public competition process. The price is usually valid for a maximum period of 12 months calculated from the date of the adjudication of the relevant public competition process;
 - Where an out-of-hand lease of immovable property is contemplated for registered social care organisations, the rental shall be determined by the Municipality;
 - Closed streets, avenues and lanes, public open spaces and odd lots of land which can be of no practical use to the Municipality or any other person may be sold/leased out of hand to adjoining property owners, provided that (i) written notice has been served on all adjoining property owners; and (ii) the selling price/rental shall be at fair market value;
 - Immovable property may be sold or leased out of hand to other spheres of government and other district municipalities. All such immovable property transactions shall be considered at fair market value, except (i) where immovable property was acquired for the development of a less formal township and the township is to be transferred to the Municipality at a later stage (e.g. R293 townships) and (ii) where the property will be used for projects with a view to social and economic upliftment of a previously disadvantaged group;

- Immovable properties may be sold out of hand to existing tenants who have leased the same premises for five years or longer on condition that the immovable assets are sold at fair market value;
- Immovable assets may be sold or leased out of hand in exceptional cases where the Municipality is of the opinion that public competition would not serve a useful purpose or that the asset sale or lease out of hand is in the Public Good and serves the interests of the Municipality. The full reasons for the Municipality preferring such an out-of-hand sale or lease needs to be recorded in the minutes of the Council Meeting where the decision is taken; and,
- Immovable property acquired by the Municipality for public purposes or in the community's interest, may be leased out of hand to any applicant for temporary use until such time as the property is required for development.

6. CATEGORIES OF THE R293 TOWNSHIP ASSET

The R293 Townships are categorised as follows:

- 6.1. Residential land
- 6.2. Commercial and Industrial land
- 6.3. Social sites (worship, crèche and institutional)
- 6.4. Sports sites

7. MANNER OF DISPOSAL AND LETTING

The disposal and letting of R293 Townships, will be conducted in accordance with one of the following described methods:

7.1. Sale or Letting by Public Auction/Tender/Proposal Call

All sales of immovable assets should be at current Market Value except when the public interest or the plight of the poor demands otherwise. All transactions

are subject to the tendering and adjudication guidelines, contained in the policy. Other than in exceptional circumstances as prescribed in this policy, all sales of immovable assets should be on public auction.

7.2. Donation “Gratis” Transfer

The donation of an immovable asset to other organs of State or to CBO's, NGO's and Civil Society Organisations, in furtherance of Socio-Economic and Environmental Objectives may be considered by the Council.

7.3. Letting

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

An agreement of Lease should be concluded, clearly describing all salient details, i.e. the parties, assets, rental payable, conditions, durability and the breach of the Lease agreement.

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

7.4. Exchange

The process of exchange it means that a disposal and an acquisition is taking place, simultaneously and therefore the rules of both must apply and usually

occurs where one party approaches another to purchase an asset and instead of a purchase price being agreed, the parties exchange ownership of their respective land assets.

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

7.5. Public Private Partnership

In the context of disposal, a PPP is a transaction between the municipality and a private party. A PPP agreement may only be entered following the compliance with Section 120 of the MFMA.

7.6. Transfer between Spheres of Government

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

Transfer of land and contemplated shall be subject to a clearly defined reversionary clause, providing for a reversionary of ownership to City of Polokwane, free of charge, in the event that the immovable asset is no longer to be used for the specific socio-economic purpose or owner occupation by the government department concerned.

7.7. Special Conditions

The Municipality acknowledges that in certain special circumstances property can be sold or let by Private Treaty. These special circumstances apply to the following categories of properties: -

- a. Non-viable parcels of land may be let or sold to adjoining owners. The determination of non-viability rests with the Council and its decision will be final.
- b. Viable properties in the case of business and industrial expansion and retention, may be let or sold to the adjoining owners at market related prices.
- c. Properties identified for sale and hire to CBO's, NGO's, NPO's and Public Benefit Organisations, defined by the Income Tax Act and listed in schedule 9 of the Act.
- d. Vacant industrial land.
- e. Vacant land for the development of lower income housing in the categories of low cost, social and bank charter housing.
- f. The sale of Municipal land, involving Black Economic empowerment in partnership with foreign investors.
- g. Municipal land for Community projects.
- h. Land for worship purposes.
- i. Municipal property for educational purposes other than private schools.
- j. The sale of Municipal owned property, subject to a long term registered lease, of ten years and longer, where the sale of the freehold rights is of greater benefit to Council than the present value of the income flow from rental. This provision does not apply to Council owned property that is multi-tenanted. Such a sale must only take place after a proper cost benefit analysis has been undertaken. The analysis must include the following:-
 - I. Current market value.
 - II. Replacement cost.
 - III. Income streams / cash flow analysis.
 - IV. Economic life expectancy.
 - V. BBBEE considerations.

- VI. Strategic importance.
- VII. Possible future use.
- VIII. Current lease clauses.
- IX. Previously disadvantaged areas identified by the Municipality, where the local economy is stagnant and remedial steps will require special treatment.

7.8. Official and Political Bearers

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

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

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

7.9. Disposal of Rights in Immovable Assets

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

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

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

7.10. Key Principles and Guidelines Pertaining to the Letting By Council of Immovable Property

The following will be the guiding principles:

- a. Council is permitted to let immovable property in its ownership, on a long term or short term basis, by way of Private Treaty or Public Tender.
- b. Where possible, Council's immovable property should be managed as a sustainable resource by leveraging environmental, social and economic returns on such immovable property while Council retains ownership thereof.
- c. Council is permitted to let immovable property for development purposes aligned with its strategic objectives.
- d. Unless otherwise provided for in this Policy, vacant or improved immovable property shall be let at a fair Market related rental.
- e. All applications to lease immovable property must be considered in accordance with this Policy Framework and other applicable legislation.
- f. Unless otherwise provided herein, the letting of viable immovable property by Council, shall be affected by means of a process of public competition.

- g. For the purpose of this Policy, viable immovable property is deemed to be property that can be developed and function as a separate entity on its own and can be registered as separate entity by the Registrar of Deeds. Non-viable immovable property is property that owing to urban planning or physical constraints or extent, cannot be developed on its own or function as a separate entity and as such can only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner's property.
- h. Black people, who are South African citizens, will be afforded preference in terms of the Municipality's Supply Chain Management Policy in respect of the letting of viable immovable properties as embodied in Section 9 (2) of the Constitution of the Republic of South Africa (Act No. 108 of 1996).
- i. In order to achieve the objective of broad based economic empowerment, Council reserves the right to limit the number of leases per tenderer in the course of a tender process.
- j. Council reserves the right to entertain unsolicited bids for the lease of viable immovable property for development purposes, with the proviso that it abides by Council's Strategic Objectives and more specifically that it favours the promotion of Black Economic Empowerment, Entrepreneurship and Community upliftment.
- k. Non-viable immovable property may be let by Private Treaty to adjoining owners. Unless otherwise provided herein, such immovable property shall be let at a fair market related value, determined by a Professional Valuer. Leases for gardening purposes shall be at the tariff rental as approved by Council from time to time. No permanent structures shall be permitted on immovable property let for gardening purposes except a perimeter enclosure acceptable to Council.
- l. Immovable property may be let by Private Treaty to social care users. Rentals shall be determined in terms of the tariff rentals as approved by Council from time to time and in such cases, the Lessee shall

accept responsibility for the maintenance of the immovable property and any improvements thereon.

- m. Viable immovable property may be let by Private Treaty in exceptional cases where the Council is of the opinion that Public competition would not serve a useful purpose or that it is in the interest of the Community and the Council. Council's reasons in each instance, must be recorded as part of its Resolution.
- n. Sport facilities and other public amenities may be let by Private Treaty to Sports Boards, Sports Federations and other similar bodies in accordance with Council's Policies on sports facilities and public amenities. Community based bodies and non-professional sporting bodies shall be charged the tariff rentals as approved by Council from time to time. Professional 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.
- o. Private Treaty letting of immovable property for outdoor seating to adjoining restaurant owners, is permitted subject to statutory requirements being complied with and a Professional Valuer determining the rental charged.
- p. Lease Contracts with existing tenants of immovable properties may be renegotiated where Council is of the opinion that public competition would not serve a useful purpose or that renewal is aligned with Council's strategic objectives and in the interest of the Community, subject to such renewal being advertised calling for public comment as described in this Policy. The existing tenant must give notice of the intention to renegotiate the lease at least six months before the date of termination.
- q. Improvements to Council's immovable property established by the Lessee and which Council wishes to retain shall revert to Council, free of compensation, at expiration or termination of the Lease. Where such improvements are not required by the Council, these shall be removed by the Lessee to the satisfaction of Council and all costs shall be borne by the Lessee.

- r. An owner of fixed immovable property who leases Council immovable property, may be substituted by a successor-in-title as deemed necessary on the same terms and conditions and / or additional terms and conditions.
- s. No application shall be processed unless the prescribed application fee as per tariff has been paid nor shall any proposed lease be advertised unless the applicant has confirmed, in writing, that it will bear all costs involved in such transaction including, but not limited to, Legal, Survey, Rezoning, Sub-division, Consolidations, Advertisement, Relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

7.11. Key Principles and Guidelines pertaining to the disposal and letting of immovable property for social care uses

Social care is defined as services provided by registered welfare, charitable, non-profit cultural and religious organisations and includes, but is not limited to, the following types of uses :-

- a. Place of Worship to the degree and for that portion of a facility being used for spiritual gathering by, and social/pastoral/manse/welfare caring and support to Worshipers and the broader Community.
- b. Child care facility insofar as it contributes to the functioning of a multi-use childcare facility and is operated on a non-profit basis.
- c. Retirement villages for that portion of the building or facility available to general public use at subsidised / nominal prices.
- d. Schools or centres – utilised as homes for the handicapped and disabled persons.
- e. Non-profit rehabilitation centres.
- f. Homes/centres for indigent, battered or destitute persons.
- g. Organisations for the homeless and elderly.

- h. Youth activity centres.
- i. Facilities for the accommodation, care and burial of animals.
- j. Cemeteries, NPO funeral parlours and non-profit crematoria.

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

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

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

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

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

7.12. Amendment and Review of Policy

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