



**'n Unieke en sorgsame Vallei van uitmuntende dienslewering, geleentheid en groei.  
Intlambo ekhethekileyo enenkathalo, egqwesayo kuniko-zinkonzo, ivulela amathuba kwaye iphuhlise.  
A unique and caring Valley of service excellence, opportunities and growth.**

## **LAND MANAGEMENT AND DISPOSAL POLICY**

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## **PART 1: PREAMBLE**

**WHEREAS** the Municipality has the right to govern on its own initiative the local government affairs of its community, subject to national and provincial legislation, as provided in terms of **section 151(3)** of the **Constitution** and **section 4** of the **Systems Act**.

**AND WHEREAS** section 14 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) – [MFMA] provides for the disposal of municipal capital assets; and

**AND WHEREAS** the Municipal Asset Transfer Regulations – [MATR] was issued in 2008 as per the MFMA to augment the aforementioned provisions; and

**AND WHEREAS** a Municipal Land Management and Disposal Policy will give effect to the above and reflect the methodology and procedures for the sale and letting of various types of properties in order to make available economic opportunities in the Municipality for local investors; and

**NOW THEREFORE** the Breede Valley Municipal Council adopts the Municipal Land Management and Disposal Policy as set out in this document.

## **PART 2: DEFINITIONS**

**“BBBEE Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

**“BBBEE”** means Black Economic Empowerment, which includes the economic empowerment of all

black people including women, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to –

- (a) increasing the number of black people that manage, own and control enterprises and productive assets with particular reference to preferential population groups;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
- (c) human resource and skills development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investment in enterprises that are owned or managed by black people;

**“BBBEE Enterprise”** means an enterprise whose BBBEE score in terms of a sector scorecard, which has been issued as a code of practice or in terms of the DTI generic scorecard, is greater than or equal to 30% and has been verified by an accredited Verification Agency and is in line with the Small Business Development Act.

**“calendar month”** means a period extending from a date in one calendar month to the preceding date in the following month;

**“commercial service”** means a commercial service as defined in **section 1** of the **Municipal Asset Transfer Regulations**;

**“competitive bidding process”** means a competitive bidding process referred to in this policy, read with other applicable policies and legislation;

**“competitive bid”** means a bid in terms of a competitive bidding process;

**“Constitution”** means the **Constitution for the Republic of South Africa Act, 1996 (Act 108 of 1996)**.

**“councillor”** means a member of Breede Valley Municipal Council.

**“delegation”** in relation to a duty, includes an instruction to perform the duty, and **“delegate”** has the corresponding meaning.

**“delegation authority”** means :

- “(a) in relation to a delegation of a power or duty by a municipal council, means the municipal council; or
- (b) in relation to a sub-delegation of a power or duty by another political structure, or by a political office bearer, councillor or staff member of a municipality, means that political structure, political office bearer, councillor or staff member.”

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

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

**“disposal management system”** means the system contemplated in **regulation 40** of the **Municipal Supply Chain Management Regulations** published in **Government Gazette, no 868 of 2005**;

"**emergency**" means an emergency dispensation in which one or more of the following conditions are present –

- (a) the possibility of human injury or death;
- (b) the prevalence of human suffering or deprivation of rights;
- (c) the possibility of damage to property, or suffering and death of livestock and animals;
- (d) the interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of Breede Valley Municipality as a whole;
- (e) the possibility of serious damage occurring to the natural environment;
- (f) the possibility that failure to take necessary action may result in Breede Valley Municipal Council not being able to render an essential community service; and
- (g) the possibility that the security of the state could be compromised.

"**high value**" see asset transfer regulations.

"**immovable property**" includes, but is not limited to –

- (a) immovable property or any share therein registered in the name of a person or entity, including, in the case of a sectional title scheme, a sectional title unit registered in the name of a person or entity;
- (b) a right to an exclusive use area held in terms of a notarial deed of cession;
- (c) a real right registered against immovable property in the name of a person or entity, excluding a mortgage bond registered against the property.
- (d) any share in a share block company as defined in **section 1** of the **Share Blocks Control Act, 59 of 1980**;
- (e) a "public place" or "public street" as described in the Integrated Zoning Scheme of Breede Valley Municipality;
- (f) immovable property as defined in **section 107 of the Deeds Registries Act, 1037 (Act 47 of 1937)**, and including property consisting of land, buildings, crops, or other resources still attached to or within the land or improvements or fixtures permanently attached to the land or a structure on it;

**“In principle approval”** means approval by Council to dispose immovable property taking into account the requirements of **regulation 7** of the Municipal Asset Transfer Regulations and subject to compliance with the Breede Valley Municipal Supply Chain management system;

**“Municipal Asset Transfer Regulations (MATR)”** refers to the **Municipal Asset Transfer Regulations** promulgated in terms of the MFMA and published in **Government Gazette No. 31346 of 22 August 2008**.

**“Municipal Finance Management Act (MFMA)”** refers to the **Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)**.

**“Municipal Manager”** means a person appointed by Council in terms of **section 54A** of the **“Systems Act.”**

**“municipality”** means Breede Valley Municipal Council in terms of the **“Structures Act”**.

**“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;

**“official”** means an official as defined in section 1 of the MFMA;

**“organ of state”** means an organ of state as defined in the MATR;

**“political office bearer”** means the Speaker, Executive Mayor Deputy Executive Mayor as referred in the **“Municipal Structures Act.”**

**“political structure”** means the council of the municipality or any committee or other collective structure of the municipality, elected, designated or appointed in terms of specific provisions of the **“Municipal Structures Act.”**

**“PPPFA”** means the **Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)**, including any Regulations promulgated in terms thereof from time to time;

**“Promotion of Administrative Justice Act”** means the **Promotion of Administrative Justice Act 2000 (Act 3 of 2000)**.

**“Property By-Law”** means any by-law enacted by Breede Valley Municipality from time to time relating to the management and administration of property;

**“Property Portfolio”** means a portfolio responsible for property transactions contemplated in this Policy;

**“Property Right”** means a right to use, control or manage a Property for a period exceeding a Calendar Month, as granted by Breede Valley Municipality 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 BVM, or a lease agreement entered into by BVM as lessor, constitutes a Property Right;

**“Property Transaction”** means either a Disposal of Property or the granting of a Property Right;

**“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**;

**“SCM Policy”** means the Supply Chain Management Policy of BVM, as approved and implemented in terms of **section 111** of the MFMA, read with the SCM Regulations;

**“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**;

**“Systems Act”** means the **Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)**, including any Regulations promulgated in terms thereof from time to time;

**“Viable Property”** means Property that can be developed and function as a separate entity capable of registration by the Registrar of Deeds.

Words not defined in this Policy have the meaning assigned to them in the **Municipal Finance Management Act** and the **Municipal Asset Transfer Regulations**.

### **PART 3: LEGISLATIVE AND POLICY FRAMEWORK FOR THE MANAGEMENT OF BREEDE VALLEY MUNICIPAL PROPERTY. ALIGNMENT WITH MUNICIPAL STRATEGIC GOALS AND OBJECTIVES**

The legislative framework for the management of the Breede Valley municipal property is contained and governed in a number of pieces of legislation, including but not limited to:

- 3.1. the **Municipal Finance Management Act (MFMA)**, in particular **section 14**, which deals with disposal of capital assets;

- 3.2 the **Municipal Asset Transfer Regulations (MATR)**, which governs –
- 3.2.1 the transfer and disposal of capital assets by municipalities and municipal entities; and
  - 3.2.2 the granting by municipalities and municipal entities of rights to lease, use, control or manage capital assets;
  - 3.2.3 the **Property By-Law**;
  - 3.2.4. **Supply Chain Management Policy of Breede Valley Municipal Council**;
  - 3.2.5. Any other applicable legislation, regulations and policies that may govern the disposal, letting or transfer of ownership of municipal land and related activities that are not in contradiction with the primary legislation referred to above.
- 3.3. This Policy must be read together all principles recognised in terms of the common law, especially relating to contracts and contract management.

## **PART 4: APPLICATION OF THIS POLICY**

### **4.1. CORE PRINCIPLES**

This policy is applicable when council and the administration is considering the transfer and/or disposal, as well as the granting of the right to use, control or manage of immovable capital assets of council. The Municipality may:

- 4.1.1. alienate or let or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the Municipality;
- 4.1.2. grant a servitude, way leave, encroachment or other rights on any land of which the Municipality is the owner;
  - 4.1.2.1. subject to this policy document and the provisions of applicable legislation; or
  - 4.1.2.2. unless it is precluded from so doing by law or the conditions under which such property was acquired by the Municipality.
- 4.1.3. enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA; and
- 4.1.4. enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA.
- 4.1.5 must aim to redress past land ownership patterns to reflect the population demographics of the municipality.
- 4.1.6 ensure the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

## **4.2. FIXED ASSET REGISTER**

- 4.2.1. Breede Valley Municipal Council maintains a fixed asset register, which format complies to the requirements of GRAP, GAMAP and any other accounting standards prescribed in terms of legislation.
- 4.2.2. All departments within Breede Valley municipal council shall promptly notify the Chief Financial Officer, who is responsible for the updating of said register, about any amendments which has to be included in said register.

## **4.3. CATEGORIES OF MUNICIPAL LAND**

Breede Valley Municipality owns various categories of immovable assets which includes, land with restrictive title, heritage assets and commonage. Said properties are managed in line with relevant legislation applicable to it.

## **4.4. METHOD OF DISPOSAL OR TRANSFER**

### **TRANSFER OR DISPOSAL OF IMMOVABLE ASSETS**

- 4.4.1. The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of immovable property needed to provide the minimum level of basic municipal services in accordance with Section 14(1) of the MFMA.
- 4.4.2. The Municipality may transfer ownership or otherwise dispose of immovable property only after:
  - 4.4.2.1. a public participation process has been conducted to facilitate the determinations the municipal council must make in terms of sections 14(2)(a) and (b) of the MFMA in the case of disposal of any capital asset with a total value exceeding five percent of the total value of the immovable assets of the Municipality in the financial year; and
  - 4.4.2.2. the municipal council has, in terms of sections 14(2)(a) and (b) of the MFMA;
    - 4.4.2.2.1. decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services;
    - 4.4.2.2.2. has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset in accordance with Section 14(2) of the MFMA; and



- 4.4.2.2.3. has after consideration of the content of the above-mentioned provisions approved in principle that the capital asset may be transferred or disposed of.
- 4.4.2.3. The public participation process in terms of the above-mentioned provisions may only be authorised by the municipal council. A request to the municipal council for authorisation of a public participation process must be accompanied by:
  - 4.4.2.3.1. a valuation and the method used to determine the value of the capital asset to be transferred or disposed of;
  - 4.4.2.3.2. the reasons for the proposed transfer or disposal of the capital asset;
  - 4.4.2.3.3. any expected benefits to the Municipality as a result of the proposed transfer or disposal;
  - 4.4.2.3.4. any expected proceeds to be received by the Municipality from the proposed transfer or disposal; and
  - 4.4.2.3.5. any expected gain or loss to be realised or incurred by the Municipality arising from the proposed transfer or disposal.
- 4.4.3. Approval in terms clause 4.4.2.2.3. may be given subject to any conditions, including:
  - 4.4.3.1. the way in which the capital asset is to be sold or disposed of with reference to the Supply Chain Management Regulations and policy;
  - 4.4.3.2. a price or minimum compensation for the capital asset;
  - 4.4.3.3. whether the asset may be transferred or disposed of for less than its fair market value, in which case the criteria set out in clause 4.4.9 must be considered, and
  - 4.4.3.4. 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.
- 4.4.4. A decision by the municipal council that a specific immovable property is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that asset has been sold, transferred or otherwise disposed of in accordance with Section 14(3) of the MFMA.
- 4.4.5. Any transfer of ownership of immovable property must be fair, equitable, transparent, competitive and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.

- 4.4.6. The Municipality is not obliged to consider a private request, commonly called an unsolicited bid, received outside its normal bidding process. But if Council does decide to consider said application, it shall request the administration to, depending on the type of disposal to ensure that said transfer or disposal is done in line with relevant legislative prescripts.
- 4.4.7. The Municipality shall not transfer or dispose of a capital asset, unless it has advertised its intention so to act by causing a notice to that effect to be:
- 4.4.7.1. affixed to the public notice boards of the Municipality, satellite offices and libraries;
  - 4.4.7.2. published in a newspaper that is circulated within the area of the town where the relevant property is situated;
  - 4.4.7.3. published on the official website of the Municipality, in accordance with Section 21A of the Systems Act, in which any person who wishes to object to the exercise of any such intention, is called upon to lodge his/her comments, objection or representations in respect of such intention in writing with the Municipal Manager within a period of not less than thirty days from the date of the publication of the notice in the newspaper;
  - 4.4.7.4. considered the objections (if any) lodged in accordance with the advertisement above, and
  - 4.4.7.5. if the municipal council has authorised the conduct of a public participation process for the proposed transfer or disposal of any immovable asset with a total value exceeding five percent of the total value of the immovable assets of the Municipality in the financial year, the accounting officers must at least 60 days before the meeting of the council at which the determinations referred to in 6(1)(b) are to be considered:
  - 4.4.7.6. in accordance with section 21A of the Municipal Systems Act, make public:
    - 4.4.7.6.1. the proposal to transfer or dispose of the immovable asset together with the information statement referred to above, and
    - 4.4.7.6.2. invite the local community and other interested persons to submit to the Municipality comments or representations in respect of the proposed transfer or disposal of the capital asset, and
    - 4.4.7.6.3. solicit the views and recommendations of the National Treasury and the relevant provincial treasury in the matter.

4.4.8. The above-mentioned provisions do not apply to the transfer of immovable property to another municipality or to a national or provincial organ of state.

### **COMMUNITY VALUE**

4.4.9. The community value to be received in exchange for an asset shall be applicable and taken into consideration in accordance with Section 14(2)(b) of the MFMA, in the case of:

4.4.9.1. sales to registered social care organisations / institutions in which case the purchase price of such immovable property shall be fixed at a minimum of 50% of the fair market value except in cases where the Municipality taking into account the economic and community value received in return for the asset decides otherwise. Such sales shall be subject to:

4.4.9.1.1. each case being considered on its own merit;

4.4.9.1.2. a reversionary clause being included in the relevant deed of sale;

4.4.9.1.3. Council's pre-emptive right being registered in the relevant title deed;

4.4.9.1.4. the calling of tenders in those cases where there are more than one applicant interested in acquiring land for a specific use;

4.4.9.1.5. a successful application in this regard to the National Treasury in terms of Section 170 of the MFMA in cases where it amounts to a departure from the MFMA or applicable Regulations, and

4.4.10. In the case of immovable properties referred to in the Housing Act, 1997 (Act 107 of 1997), or any ensuing act, in which case such properties shall be sold/let as provided for in that act and/or relevant council policy.

### **ALIENATION OR LEASING**

4.4.11. Alienation or leasing must be effected by means of public competition, except in the instances detailed in paragraphs 4.4.9 and 4.4.43 – 4.4.52.

4.4.12. The Municipality, as a rule, bearing in mind the provisions of this policy, with the exception of cases referred to in clauses 4.4.9 and 4.4.43, shall not:

4.4.12.1. let immovable property at a lower rental than the rental determined;

- 4.4.12.2. sell, alienate or dispose of immovable property, grant a servitude or alienate a right at a lower amount than the amount at which it has been valued;
- 4.4.12.3. exchange immovable property for other property if the amount at which the other property has been valued is lower than the amount at which the immovable property which the Municipality wishes to exchange, has been valued, except in cases when the public interest or the plight of the poor demands otherwise taking into account the provisions of Regulation 13(2) of the Local Government: Municipal Finance Management Act, 2003 - Municipal Asset Transfer Regulations and subject to a successful application in this regard to the National Treasury in terms of Section 170 of the MFMA.
- 4.4.13. The established price for property to be disposed of or leased by way of a competitive process will be determined in such a way that it corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs. The fair market value or the rental amount of property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser.
- 4.4.14. In assessing tenders, the Municipality may consider the total cash value of the packages offered by the tenderers, where such packages are permissible in terms of the conditions of tender. In other words, where the actual amounts tendered are roughly similar, but a particular tenderer, for example, also offers to make improvements to the property, the cash value of such improvements, which proposed improvements may not be deviated from, may also be taken into consideration to determine the highest tender.
- 4.4.15. Where immovable property is alienated or leased for a specific type of development project, including a business project, and the specific type of development which the Municipality is prepared to allow is of importance, the Municipality may call for development proposals, which may include a monetary offer. In such a case, the price offered for the immovable property by the developer will only form part of the total package.
- 4.4.16. Should the Municipality consider it desirable not to accept the highest tender or offer or decide to accept a particular development proposal in which the amount tendered is not the highest offer, the reasons for this decision must be fully set out and recorded in the minutes of the bid adjudication committee

- meeting in question and if applicable the minutes of the appeal tribunal.
- 4.4.17. In cases where tenders are according to the findings of the bid adjudication committee identical and the provisions of paragraphs 4.4.15 and 4.4.16. are not applicable, the successful tenderer may be determined by the drawing of lots in the presence of the involved parties.
- 4.4.18. Immovable property sold or let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.
- 4.4.19. The Municipal Council must, when considering any proposed transfer or disposal of a capital asset, take into account the aspects listed in Regulation 7 of the Local Government: Municipal Finance Management Act, 2003 - Municipal Asset Transfer Regulations.
- 4.4.20. The Municipality shall at all times when considering the alienation of its immovable assets, take into consideration the Municipality's obligation to, as part of its process of integrated development planning take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to identify and designate land for housing development in terms of the Housing Act, 1997 (Act 107 of 1997).
- 4.4.21. Where immovable property is alienated or leased the municipal council may set specific requirements to ensure that black people including women, youth, people with disabilities and people living in rural areas are protected or advanced by setting specific requirements in the disposal request, bid document or request for proposals for;
- (a) the management, ownership and control of enterprises;
  - (b) community value, and social responsibility programmes; and
  - (c) BBBEE Enterprises

## **CONDITIONS OF SALE**

- 4.4.22. All costs pertaining to a transaction shall be borne by the buyer, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs. Where necessary, a deposit to cover the costs may be required.
- 4.4.23. Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the

- Municipality as a result of the sale of a immovable asset then all related costs shall be for the account of the purchaser.
- 4.4.24. Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the Municipality, make such consolidation undesirable.
- 4.4.25. Where immovable property is sold for development, a condition must be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition must be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless an extension has been granted by the Municipality.
- 4.4.26. Save with prior approval, the property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme applicable for such purposes.
- 4.4.27. The agreement of sale shall be finalised and concluded within 60 days from the date of the Municipality's official written request and registration must be effected within 60 days of signature of the agreement by both parties. Failure to comply shall cause the sale to lapse.
- 4.4.28. The agreement must contain a suspensive condition in respect of property which is sold subject to approval in terms of land use planning legislation.

## **CONDITIONS OF LEASE**

- 4.4.29. All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.
- 4.4.30. The Municipality may:
- 4.4.30.1. enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA; and
  - 4.4.30.2. enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA.

- 4.4.31. An agreement for the lease of municipal fixed property shall be in writing stipulating the terms and conditions of the contract or agreement, which shall include at least the following provisions:
- 4.4.31.1. the period of said lease agreement;
  - 4.4.31.2. a complete description of the property being leased;
  - 4.4.31.3. the amount of the rental, including the escalation date and rate of increase of said rental per annum;
  - 4.4.31.4. the termination of the contract or agreement in the case of non- or underperformance;
  - 4.4.31.5. dispute resolution mechanisms to settle disputes between the parties;
  - 4.4.31.6. periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years;
  - 4.4.31.7. any other matters that may be prescribed; and
  - 4.4.31.8. escalation in terms of paragraph 4.4.34 of this policy.
- 4.4.32. No immovable property shall be sub-let and no lease may be ceded or assigned without the prior written approval of the Municipality.
- 4.4.33. An owner of immovable property who leases adjoining municipal property may be substituted by his successor in title for the duration of the remainder of the lease term.
- 4.4.34. Rental, except where it is decided otherwise by the Municipality shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items).
- 4.4.35. The lessee shall, as a rule, be liable for the payment of rates and service charges in respect of the properties listed in the current valuation role. In the case of leases to certain social care users at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the rates policy of the Municipality.
- 4.4.36. The letting of lanes, public open spaces, road reserves and the like shall be subject to the following:
- 4.4.36.1. closing off/securing by the lessee of the leased area to the satisfaction and discretion of the Municipality;
  - 4.4.36.2. the lessee shall be responsible for the cost of relocation or installation of services when required and for the securing of servitudes; and
  - 4.4.36.3. the closure of the lanes, public open spaces and road in terms of the Ordinance shall be done at the cost of the lessee.
- 4.4.37. The lessee shall indemnify the Municipality against any possible claims arising from the lease or use of the immovable property.

- 4.4.38. Where land is leased for development, a condition shall be included in the lease agreement stipulating that such development shall be completed within two years from date of conclusion of the lease agreement. Likewise a suspensive condition shall be included in the lease agreement to provide for cancellation in the event that the development has not been completed.
- 4.4.39. Save with prior written approval of the Municipality the property may only be used for the purpose for which it was let.
- 4.4.40. The Municipality shall at all reasonable times be entitled to enter and inspect the immovable property.
- 4.4.41. The lessee shall be responsible for maintaining the leased property including all improvements thereon to the satisfaction of the Municipality.
- 4.4.42. Improvements provided by the lessee and which the Council wishes to retain, shall revert, free of charge, to the Municipality once the lease period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled. Alternatively, agreement may be reached to the effect that the lessee may remove any improvements erected from its own funds within three months of termination of the lease agreement, failing which such improvements shall revert to the Municipality free of charge without damage and if provided for in the agreement. The lessee shall be liable for the cost involved in the removal of such improvements not required by the Municipality.

## **LEASE AGREEMENTS**

- 4.4.43. Lease agreements for a term up to 3 years entered into under this policy may be renewed without applying the provisions of clause 4.4.7, but not exceeding 3 years in total.
- 4.4.44. Immoveable property let for short-term periods up to 12 months without the option of renewal need not be advertised in terms of clause 4.4.7, but shall be subject to inter alia the following:
- 4.4.44.1. the lessee shall be responsible for all costs regarding services, ablution facilities, etc. if required;
  - 4.4.44.2. the Municipality shall determine the rental;
  - 4.4.44.3. the lessee shall undertake in writing to compensate the Municipality for damages caused to the property for whatever reason.
  - 4.4.44.4. the lessee shall indemnify the Municipality against any claims.

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



- 4.4.45. Whenever a number of comparable immovable properties are offered for sale or lease by public competition and there being any remaining immovable property unsold or not being leased after such public competition such remaining properties may be sold, subject to the provisions of clause 4.4.6., or leased out of hand by the Municipality at the average realised price obtained for properties sold or leased in accordance with the public competition process. Such price shall be valid for a maximum period of 12 months calculated from the date of the adjudication of the relevant public competition process.
- 4.4.46. In the case of the out-of-hand lease of immovable property to registered social care organisations/institutions, the rental shall be determined by the Municipality.
- 4.4.47. Closed streets and lanes, public open spaces and odd lots of land which can be of no practical use to any other person may be sold/leased out of hand to adjoining property owners, provided that -
- 4.4.47.1. written notice have been served on all adjoining property owners; and
  - 4.4.47.2. where necessary that an advertisement be places in a local newspaper;
  - 4.4.47.3. the selling price/rental shall be at fair market value, provided that the Municipality shall determine the rental of land for garden purposes.
- 4.4.48. Immovable property may be sold/leased out of hand to other spheres of government and other municipalities. All such immovable property transactions shall be considered at a fair market value basis, except in the following cases:
- 4.4.48.1. where immovable property was acquired for the development of a less formal township and such township is to be transferred to the Municipality at a later stage;
  - 4.4.48.2. where the property will be used for projects with a view to social and economic upliftment of a previously disadvantaged group.
- 4.4.49. Immovable properties may be sold out of hand to existing tenants who have leased such premises for five years or longer on condition that the immovable property is sold at fair market value.
- 4.4.50. Immovable property may be sold/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 it is in the interest of the community and the Municipality, and where none of the conditions as set out in this policy document provides for such exception is permitted, and where they are not in conflict

with any provision of this policy document. In such cases the full reasons for the Municipality preferring such out-of-hand sales or leases shall be recorded in the minutes of the council meeting concerned.

- 4.4.51. Odd lots of land which can be of no practical use to any other person may be sold, out of hand subject to the provisions of clause 4.4.7 or leased out of hand to the owner of an adjoining property.
- 4.4.52. Immovable property acquired by a 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.
- 4.4.53. Houses may be leased out of hand to employees of the Municipality, on condition that rentals are market related.

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

- 4.5.1. The Municipality may, subject to such conditions as it may deem fit allow the construction of any colonnade, veranda, balcony, bay window, pavement light, showcase or other encroachment on or over any part of a public road, and pavement opening in or under any public road or any council property. The latter will however only be permitted, subject to:
  - 4.5.1.1. an application to erect or construct an encroachment on, under or over any public road, or any immovable property owned by or vested in the Council, must apply to the Building Control Officer on a form prescribed by the Council for that purpose, as well as submitting an application to the Director: Strategic Support Services, for said encroachment.
  - 4.5.1.2. all prescripts of the Breede Valley Encroachment by-law has been complied with.
  - 4.5.1.3. no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the adjacent property owner, unless approved by council; and
  - 4.5.1.4. an encroachment fee shall be charged by the Municipality and a formal agreement need to be entered into in respect of the above encroachment; and
  - 4.5.1.5. the Municipality shall have the right of free access to the encroachment at all times for inspection, maintenance and repair of any services which may traverse the encroachment or to install such services in which case the Municipality shall not be liable for any damage to the

- encroachment which may arise from such inspection, maintenance, repair or installation, or
- 4.5.2. Council shall permit encroachments of garden areas onto commonage, public open spaces or conservation areas, for amongst others enclosures or exclusive use, for gardening or any other purpose, provided inter alia that:
    - 4.5.2.1. a written applications accompanied with an application fee tantamount to council's fee in respect of applications for departure, for such encroachments shall be submitted to the Municipality;
    - 4.5.2.2. the Manager: Town Planning or his duly authorised delegate shall:
      - 4.5.2.2.1. cause the said application to be advertised in terms of this policy;
      - 4.5.2.2.2. where objections against the said application are received, submit it to the applicant for his/her comment;
      - 4.5.2.2.3. obtain the comment from all municipal directorates;
      - 4.5.2.2.4. submit the application and all relevant documents to Council or its delegee for approval;
      - 4.5.2.2.5. notify the applicant of the Council's or its delegee of the decision and where applicable furnish him/her with a copy of any conditions imposed by the Council or its nominee; and
      - 4.5.2.2.6. issue a permit to the successful applicant to give effect to the approval of the application.
  - 4.5.3. the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted, except with council approval.
  - 4.5.4. no encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, except with council approval and subject to conditions prescribed by council.
  - 4.5.5. an annual encroachment fee, determined by council, will be levied/proportionally levied on successful applicants for the right obtained to encroach.
  - 4.5.6. Council shall permit the use of municipal land for outdoor seating adjoining a restaurant, provided inter alia that:
    - 4.5.6.1. the provisions of this policy is complied with; and
    - 4.6.6.2. the safe movement of pedestrians is not hampered.
  - 4.5.7. The Municipality may reduce the extent of a public place or public street which is encroached upon by the extent of the encroachment or by such greater extent as may, in its opinion, be desirable.

## **PART 5: SHORT TITLE AND COMMENCEMENT**

This policy is called the LAND MANAGEMENT AND DISPOSAL POLICY and shall commence after Council approval.