

EDEN DISTRICT MUNICIPALITY IMMOVABLE PROPERTY MANAGEMENT POLICY

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IMMOVABLE PROPERTY MANAGEMENT POLICY

Acknowledgement: George Municipality, Cape Town City Council, Nelson Mandela Bay Municipality

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1 PREAMBLE

The intention of this policy is to manage the properties of Council.

2 SCOPE AND PURPOSE

This policy document does not constitute an operational manual in respect of immovable property. Its scope and purpose is to set out the decision-making guidelines for the management of immovable property with due regard to the provisions in particular of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), Supply Chain Management Legislation and the Municipal Asset Transfer Regulations, 2008 (GN R878 in GG 31346 of 22 August 2008).

3 STATUTORY AND REGULATORY FRAMEWORK

- 3.1 The Eden District Municipality shall, notwithstanding this policy, comply with all relevant legislation, including but not limited to the Constitution of the Republic of South Africa, 1996.
- 3.2 This document constitutes a policy statement and shall not take precedence over the standards specified by the Accounting Standards Board.
- 3.3 This policy does not constitute an interpretation of the legislation in terms of which it is promulgated or which has a bearing on the matters covered by this policy, but it is based on and takes cognisance of such legislation and the interpretation thereof as the Municipality may from time to time be advised by legal counsel or otherwise. On that basis the statutory requirements and directing interpretations set out in **Annexure A** influence this policy document.

4 D E F I N I T I O N S

In this policy, unless the context indicates otherwise –

“the accounting officer” means the municipal manager appointed in terms of section 82 of the Local Government : Municipal Structures Act, 1998 (Act 117 of 1998) and being the head of administration and accounting officer in terms of section 60 of the Local Government : Municipal Finance Management Act 2003 (Act No. 56 of 2003);

“the Asset Transfer Regulations” means the Municipal Asset Transfer Regulations, 2008 made in terms of the MFMA and published under GN R878 in GG 31346 of 22 August 2008;

“Calendar Month” means a period extending from a date in one calendar month to the corresponding date in the following month;

“the chief financial officer” means an officer of the Municipality designated by the municipal manager to be administratively in charge of the budgetary and treasury functions of the Municipality;

“class of property” means a grouping of assets of a similar nature or function in the Municipality’s operations that is shown as a single item for the purpose of disclosure in the

financial statements;

“closed tender” means

“community assets” means any asset that contributes to the community’s well-being such as parks, libraries and fire stations;

“cost” means the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire an asset at the time of its acquisition or construction or where applicable, the amount attributed to that asset when initially recognized in accordance with the specific requirements of GRAP or GAMAP;

“Council” means the municipal council of Eden District Municipality;

“Eden District Municipality’s Property” or **“Property”** means all the immovable property owned and managed by the Eden District Municipality in terms of this Policy;

“Competitive Process” means a call for alternative proposals, a closed tender, a public tender or a public auction;

“Constitution” means the Constitution of the Republic of South Africa, 1996;

“Disposal”, notwithstanding the meaning thereof in the Municipal Asset Transfer Regulations, means the transfer of ownership;

“Disposal Management System” means the disposal management system provided for in Chapter B of this Policy;

“ennoblement” means either refurbishing, where a property is redecorated, service systems are removed or upgraded, and where applicable, refurbishing is done; and/or developing or redeveloping where structures are erected or structural changes are made; and/or re-planning, where the initial zoning and purpose of a property are changed;

“fixed asset property register” means the Municipality’s register which contains information in respect of all the fixed properties (land and improvements) registered in the name of the Municipality as well as servitudes in favor of, bequests and properties reverting back to the Municipality, and properties being utilised by the Municipality, and **“municipal property portfolio”** shall have a corresponding meaning;

“GAMAP” means Generally Accepted Municipal Accounting Practice;

“GRAP” means Generally Recognized Accounting Practice;

“HDI” means a historically disadvantaged individual as referred to in the Preferential Procurement Regulations, 2001;

“heritage assets” means assets of cultural, environmental or historical significance such as works of art, historical buildings and statues;

“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 municipality as determined from the latest available audited financial statements of the municipality, or such lower amount as may from time to time be determined by resolution of the Council of the municipality;

“infrastructure assets” means any asset that is part of a system or network of similar assets, is immovable and specialized in nature such as roads, water reticulation schemes, sewerage purification and trunk mains and power supply systems;

“investment properties” means property (land or a building or part of a building or both) held to earn rentals or for capital appreciation or both, rather than for –

use in the production and supply of goods or services or for administrative purposes; or

sale in the ordinary course of business;

“long term” means a period of longer than three years;

“market value” means the estimated amount for which a property should exchange on the date of valuation between a willing buyer and willing seller in an arms’ length transaction after proper marketing wherein the parties had acted knowledgeably, prudently and without compulsion;

“MFMA” means the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) and all regulations promulgated in terms of the Act;

“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;

“Municipality”, means when referred thereto as –

an entity, the Eden District Municipality as a municipality described in Section 2 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000), including a duly authorized official of the Municipality; and

a geographical area, the area of jurisdiction of the Municipality as determined in terms of the Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998);

“municipal valuation” means the official valuation of an immovable property as reflected in the Municipality’s valuation roll;

“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;

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

"PBO" means a public benefit organisation referred to in section 30 of the Income Tax Act, 1962, undertaking a public benefit activity as referred to in the ninth schedule to the Income Tax Act, 1962;

“policy” means the immovable property management policy set out in this document;

“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;

“the Property By-Law” means any by-law enacted by the Eden District Municipality from time to time relating to the management and administration of the Eden District Municipality’s Property;

“the Property Laws” means the relevant provisions of the MFMA, the MATR and the Property By-Law collectively;

“the Property Policy” or **“this Policy”** means this policy governing the Management of the Eden District Municipality’s Property;

“Property Portfolio” means a **portfolio** as contemplated in clause 5.5 of this Policy;

“Property Right” means a right to use, control or manage a Property for a period exceeding a Calendar Month, as granted by the Eden District 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 the Eden District Municipality, 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;

“social care” means uses as referred to in paragraph 8.19, and **“social care users”** shall have a corresponding meaning;

“Supply Chain Management Legislation” means the Municipal Supply Chain Management Regulations made in terms of the MFMA (**“the SCMR”**) and the Municipality’s Supply Chain Management Policy (**“the SCMP”**) as far as it relates to the acquisition, disposal or letting of immovable property;

“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, 32 of 2000;

“**transfer agreement**” means an agreement in terms of which immovable property is disposed of by the Municipality;

“**VAT**” means Value-Added Tax in terms of the VAT Act;

“**VAT Act**” means the Value-Added Tax Act, 1991, as amended;

“**Viable immovable property**” means property that shall be deemed to be property that can be developed and function as a separate entity and can be registered as a separate entity in a Deeds Registry;

Words and expressions defined in the MFMA, GAMAP or GRAP shall have the meanings assigned to such words and expressions in the MFMA, GAMAP or GRAP, as the case may be, and should words and expressions be used that are defined in the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000). Such words and expressions shall have the meanings assigned to them in the said Act.

5 PROPERTY MANAGEMENT OBJECTIVES

The Eden District Municipality’s property management objectives are the following: -

- 5.1 to utilise, reserve and manage its properties for its own use, for example, for purposes of municipal offices, as well as for purposes of provision by the Eden District Municipality, or by service providers appointed by the Eden District Municipality;
- 5.2 to utilise, reserve and manage the Eden District Municipality’s properties for broader municipal purposes in the interests of the local community;
- 5.3 to manage the Eden District Municipality’s properties not required for either of the above purposes with due regard to the interests of individual member(s) of the local community;
- 5.4 to alienate properties only in circumstances where the Eden District Municipality is satisfied that it cannot derive a reasonable economic and / or social return from continued ownership of the property;
- 5.5 to acquire immovable property or rights in immovable property for municipal purposes if and when needed to do so;
- 5.6 ensure that only assets that do not provide the minimum level of basic municipal services are disposed of;
- 5.7 ensure that assets are not disposed when the disposal of the asset or the terms of the disposal of the asset could disadvantage the municipality or community financially or otherwise; and
- 5.8 ensure that all disposals are, in terms of section 14 (5) of the Municipal Finance Management Act (Act No. 56, 2003), fair, equitable transparent, competitive and consistent with the Supply Chain Management Policy of the Eden District

Municipality.

- 5.9 recognise that property is part of a heritage that need to be safeguarded for utilisation by future generations;
- 5.10 assets should be utilised optimally to undo negative legacies and correct socio-economic deficiencies but at the same time be managed in a manner that would guarantee sustainable service delivery.
- 5.11 taking cognisance of population growth and mobility, environmental, historical sensitivities and economic changes and take that into account when decisions are made regarding the disposal of properties; and
- 5.12 recognises that Council has the duty to utilise and manage its property portfolio with due regard to the Municipality's integrated development plan ("**IDP**") and spatial development framework ("**SDF**").

6 PROPERTY MANAGEMENT PRINCIPLES

The Eden District Municipality has adopted a holistic approach to property management that gives due regard to the following principles: -

- 6.1 the best and optimal utilisation of a property;
- 6.2 the best interests of the local communities within the district;
- 6.3 the strategic objectives, as adopted from time to time, and as reflected in other policies, such as Council's Integrated Development Plan and the Spatial Development Framework;
- 6.4 the requirement that property transactions must be in accordance with a system which is fair, equitable, transparent and competitive;
- 6.5 implementation of the MATR in accordance with the MATR's governing principles of valuation, continuity of service, risk transfer and asset preservation;
- 6.6 the promotion of preference to persons historically disadvantaged by unfair discrimination;
- 6.7 the use of the Eden District Municipality'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;
- 6.8 the management of Council's properties as a sustainable resource, and where appropriate, the leveraging of the environmental, social and economic return on such property while the Eden District Municipality retains ownership thereof; and
- 6.9 the use of property as a catalyst for local economic and social development.

7. DISPOSALS

- 7.1 **Properties not for Disposal** – the Municipality **may not** dispose of a property needed to provide the minimum level of basic municipal services, 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.
- 7.2 **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).
- 7.3 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 Municipality'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.
- 7.4 **Section 14 (Non-Exempted) Disposals** - In respect of disposals which are subject to sections 14(1)-(5) of the MFMA, the Municipality **may dispose** of such Property **only after** the following requirements are met, namely:-
- 7.4.1 the Eden District Municipality, 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; and
- 7.4.2 the Eden District Municipality must have considered the fair market value of the Property and the economic and community value to be received in exchange for the Property.

8 IMPLEMENTATION OF POLICY

8.1 Methods of disposal

Properties could either be alienated or leased. This can be achieved in one or more of the following ways:

- 8.1.1 to a national or provincial department, local authority or other entity on specific terms and conditions for a specific purpose;
- 8.1.2 through an open tender process or auction;
- 8.1.3 through an invitation to submit development proposals and selling / leasing of the property to the developer who proposes an acceptable and viable development which takes into account the Municipality's socio-economic objectives together with a market related price;
- 8.1.4 entering into Public – Private - Partnerships;
- 8.1.5 entering into Public – Public Partnerships;

- 8.1.6 To Public Benefit Organisations (PBO) and the poor below market value.
- 8.1.7 To persons in the service of the municipality or the state for housing purposes.
- 8.1.8 To investors that invest in the Municipality's property portfolio as determined by Council.
- 8.2 Before alienating immovable property or rights in property, Council shall be satisfied that alienation is the appropriate methodology and that reasonable economic and social return cannot be derived whilst ownership of the immovable property or right is retained by Council.
- 8.3 Unless otherwise provided for in this policy, vacant or improved immovable property and rights in immovable property shall be alienated at market value and taking in consideration the economic and community benefits.
- 8.4 All applications for the disposal of immovable property must be considered in accordance with this policy framework and current applicable laws.

For the purpose of this policy, viable immovable property shall be deemed to be property that can be developed and function as a separate entity and can be registered as a separate entity in a Deeds Registry, and non-viable immovable property shall be property that owing to urban planning, physical constraints or extent cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner's property.

- 8.5 Historically Disadvantaged Individuals (HDI) who are South African citizens will be afforded a preference in respect of the alienation of viable immovable properties as embodied in Section 9(2) of the Constitution of the Republic of South Africa, 1996. Natural persons or legal entities that have benefited by means of preferential scoring, as provided for in this policy, shall not dispose of such property by way of a nominee purchaser.

8.6 **Plight of the poor**

Whenever the plight of the poor shall be a consideration in any decision to be taken in respect of the acquisition, disposal or letting of immovable property, regard shall be given to:

- 8.6.1 the extent to which the needs of the poor are or have been addressed,
- 8.6.2 the potential loss or benefit the poor can suffer or gain through the decision concerned; and
- 8.6.3 the financial resources available to address the needs of the poor.

For purposes of this policy, "the poor" shall mean persons who in absolute terms have little or effectively no material means, who do not earn a living wage and who, if it was not for outside direct or indirect financial assistance, would not have the food, clothing and housing required to satisfy a human being's basic needs in that regard.

8.7 **Minimum level of basic municipal services**

Whenever the Council has to decide whether or not a capital asset is needed to provide the minimum level of basic municipal services, it shall do so based on a report or reports comprehensively describing:

- 8.7.1 the usage of the asset concerned,
- 8.7.2 the consequences, if any, in relation to public health, safety and the environment should the asset be disposed of; and
- 8.7.3 the availability of other assets that would be available to provide the minimum level of basic municipal services should the asset concerned be disposed of.

8.8 **Economic and community value**

Whenever the Council has to consider the economic and community value to be received in exchange for immovable property to be disposed of, the Council shall do so based on a report or reports comprehensively quantifying in Rand the real or reasonably expected economic benefits and the realistically achievable value the community can expect to receive from the disposal in question and also setting out the periods within or over which these economic and community values are expected to materialise.

For purposes of this paragraph, the community shall include any significant segment of the community residing within the greater region of the Eden District.

8.9 **Disposal of properties in the interest of the public**

8.9.1 **General**

8.9.1.1 To ensure that not only economic needs are addressed (highest and best use) in the disposal of land but also the socio-economic needs of the community in the case of low income housing, housing for the poor and first time home owners, the intended use shall be taken into account in determining the market value of the properties concerned.

8.9.1.2 In disposing of property, the Municipality shall seek to address: -

8.9.1.2.1 The undoing of negative legacies

8.9.1.2.2 Correct socio-economic deficiencies

8.9.1.2.3 Adequately maintain the value of its resource

8.9.1.2.4 Address the social economic problems that have been handed down from the past.

8.9.1.3 The market value for low cost housing or other community purposes will therefore be determined according to the intended use and not for highest and best use.

8.9.2 **Disposal of land for institutional uses and other community based organisations**

When the need is identified in a community for the provision of an institutional community facility, and if property is available, the said land may be ennobled by means of subdivision where after the land will be advertised for that purpose and community organisations may then submit offers to acquire (buy or rent) the land and develop such. Such a transferee shall be a Public Benefit Organisation or, if not so registered, shall be capable of being so registered should it apply for registration.

8.10 **Disposal of properties below market value – reversionary right**

In the case where properties are disposed of at below market value or for a specific use such as for institutional or community uses as referred to under paragraph 8.12.1.3 a reversionary clause or a right of first refusal will be registered against the

said property.

8.11 **Disposal before ennoblement**

8.11.1 Properties will be disposed of before ennoblement when: -

8.11.1.1 Ennoblement of the property will not necessarily increase the value of the property;

8.11.1.2 It is too costly to ennoble the property and it will be cheaper to dispose of the property and allow the purchaser to ennoble the property;

8.11.1.3 It is disposed to other organs of state or to other institutions for community purposes below market value; and

8.11.1.4 Municipal houses superfluous to the official needs of the Municipality are disposed of (excluding where services must be provided or upgraded before transfer of the house can be affected, but exclude the upgrading of the house).

8.12 **Disposal after ennoblement (improvement)**

8.12.1 Properties may be ennobled before disposal when; -

8.12.1.1 Ennoblement of the property will increase the disposal value of the property;

8.12.1.2 It will relieve pressure on the private developer to obtain approval after disposal while it will be to the benefit of the Municipality and the community to rezone the property before disposal;

8.12.1.3 The Municipality wants to ensure that the property be developed for a specific purpose or to add value to the environment/community;

8.12.1.4 The ennoblement of the property can empower communities by means of job creation, etc.

8.13 **Disposal to other spheres of government**

8.13.1 Immovable property may be alienated out-of-hand to other spheres of government, local authorities or municipal entities, subject to Section 14(6) of the MFMA and Sections 20 and 21 of the Municipal Asset Transfer Regulations.

8.13.2 All inter-governmental disposals will be concluded on an arm's length basis. The price paid by the Municipality for property that belongs to one of the other tiers of government, would be equal to the market valuation as agreed between the parties.

8.13.3 If other spheres of government need a property for specific governmental use, it shall be afforded an opportunity to purchase the property to be disposed of by Municipality at market value, prior to Municipality proceeding with the disposal process.

8.13.4 If other spheres of government need a property for community upliftment or social care uses, it shall be afforded an opportunity to purchase the property to be disposed of by Municipality below market value, subject to Section 20(1)(f)(ii) of the Asset Transfer Regulations.

8.13.5 If the land is required for a specific community facility, the land may be disposed of to the other sphere of government subject to registration of a reversionary right in favour of the Municipality in the event that the property is no longer used for the stated purpose.

8.13.6 If the land is disposed of at a price below market value, a reversionary right in favour of the Municipality must be registered against the title deed of the property.

8.13.7 If the land is sold on the open market to the highest bidder, no reversionary clause

need be registered against the title deed if sold for institutional purposes as referred to in paragraph 8.9.1.3. A clause must be included in the title deed that the property can only be utilized in terms of its applicable zoning.

8.14 Social care uses

8.14.1 Social care shall mean services provided by registered welfare, charitable, nonprofit, cultural and religious organisations and includes, but is not limited to places of worship, child care facilities, rehabilitation centers, centers for the homeless, elderly and destitute persons and animal care facilities: Provided that they are registered as PBO's or are capable of being so registered should they apply for registration.

8.14.2 Immovable property owned by the Municipality may be alienated or let to social care users.

8.15 Transfer of ownership of viable immovable property arising from an unsolicited bid shall not take place unless the provisions of Section 113 of the MFMA have been complied with.

8.16 Council supports the principle of land restitution and acknowledges that any land claim can only be processed in terms of the provisions of the Restitution of Land Rights Act No. 22 of 1994 and that any restitution granted can only be made by the Land Claims Court or the National Minister of Land Affairs in terms of the said Act. Council will support every request by the Land Claims Commission for participation in negotiations and the adjudication of land claims and will endeavour to assist the Land Claims Commission in its objectives. In regard to claims for Council owned immovable property, Council will endeavour to accommodate the wishes of the Land Claims Commission and undertake to minimize land acquisition costs, subject to the provisions of the MFMA, in the spirit of giving effect to the provisions of the Constitution.

8.17 No application for the purchase or acquisition otherwise of immovable property shall be processed unless the prescribed application fee as per tariff has been paid nor shall any proposed alienation 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, re-zoning, 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.

8.18 Where viable immovable property is offered for sale by public competition, any immovable property which remains unsold in such project may be sold out-of-hand by the Municipality at the upset price or higher, as long as it is satisfied that market prices are stable. The upset price must be determined in a way that corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs. The upset price must be reviewed at least every twelve months.

8.19 **Transfer agreements**

8.19.1 No transfer agreement shall be entered into unless such transfer agreement has been drafted or the exact terms thereof been recommended by the Municipality's internal or external legal advisors.

8.19.2 A transfer agreement shall be signed in accordance with the delegation of powers in existence from time to time.

- 8.19.3 In order to ensure that:
 - 8.19.3.1 all terms and conditions of a disposal are complied with,
 - 8.19.3.2 transfer takes place in accordance with the terms of the transfer agreement and
 - 8.19.3.3 servitudes and other rights referred to in or arising from a transfer agreement are registered as provided for in the transfer agreement, the firm of attorneys who drafted or advised on the agreement shall, unless compelling reasons for not doing so exist, be instructed to attend to the transfer.

8.20 **General requirements**

Unless this policy provides otherwise all decisions regarding the disposal of immovable property shall be taken with due regard to the provisions of: 10.27.1 section 14 of the MFMA and 10.25.2 sections 7, 12(5) and 13(2) of the Asset Transfer Regulations, which decisions shall only be taken if the decision-maker has satisfied himself that he has received the information reasonably necessary to make an informed decision in that regard.

9 COMPETITIVE PROCESSES

9.1 **General Principles**

The Eden District Municipality 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:-

- 9.1.1 Public tender;
- 9.1.2 Public auction;
- 9.1.3 Closed tender;
- 9.1.4 Call for alternative proposals.

9.2 **Public Tender**

9.2.1 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.

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

9.3 **Public Auction**

Viable immovable property may be alienated by public auction in cases where the Eden District Municipality is of the opinion that it is in the interest of the community and the Eden District Municipality. 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 Eden District Municipality'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 Eden District Municipality.

9.4 **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 may be called for from all the registered owners of all the adjacent properties with which the Property can be consolidated.

9.5 **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 Eden District Municipality may, 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:-

9.5.1 **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 Eden District Municipality'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:-

- 9.5.1.1 whether the applicant has historically enjoyed a Property Right granted by the Eden District Municipality and, if so, for how long;
- 9.5.1.2 the terms and conditions of such use,
- 9.5.1.3 the exact nature of the social care or community sport purpose;
- 9.5.1.4 whether the applicant has in the past made improvements to the Property and, if so, the value of such improvements;
- 9.5.1.5 whether or not the Eden District Municipality is satisfied with the manner in which the applicant gives effect to the social care or community sport purpose.

9.5.2 **Exceptional circumstances**

In other exceptional circumstances, provided that:-

- 9.5.2.1 pursuant to the Property Transaction, the Property will be used for a public purpose by the Eden District Municipality's local community; and / or

- 9.5.2.2 the Eden District Municipality is satisfied that the Property Transaction will be exceptionally beneficial to, or have exceptional cost advantages for, the Eden District Municipality.

10 DECISION MAKING PROCESS

10.1 INTRODUCTION

Unless otherwise provided for in this policy, the alienation or letting of viable immovable property shall be effected by means of a process of public competition.

10.2 METHODS OF DISPOSAL OF PROPERTIES

10.2.1 Public auction

Viable immovable property may be alienated by public auction at market value in exceptional cases where the Council is of the opinion that it is in the interest of the community and the Municipality. 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 Municipality's strategic objectives. Where the services of an auctioneer are utilised, the auctioneer's commission shall be payable by the successful bidder and shall not form part of the financial offer to the Municipality. The auctioneer must be appointed through a Supply Chain Management process.

10.2.2 Outright tender

This method involves the call for purely financial offers for the immovable property offered for alienation. Unless otherwise determined by Council, the awarding of tenders shall be adjudicated on a maximum One Hundred (100) points system set out as follows:

10.2.2.1 Price

Sixty (60) points maximum. The highest financial offer will score Sixty (60) points with lower offers scoring proportionately in relation to the highest offer.

10.2.2.2 Status

Forty (40) points maximum, which shall be measured and compiled as follows:

10.2.2.2.1 Twenty-Five (25) points for HDI's.

10.2.2.2.2 Ten (10) points for Women.

10.2.2.2.3 Five (5) points for the Disabled of all races.

Tenderers must provide all information required in the tender document to qualify for preference points.

10.2.3 Qualified Tender or Proposal call for Strategic Properties

10.2.3.1 Principle

This method is an important mechanism for the alienation or letting of immovable property to assist in the achievement of strategic objectives of the Municipality and involves the development of strategic immovable property in terms of a predetermined package of rights with the desired nature of the development defined in considerable detail.

10.2.3.2 Process

The process involves the identification of the project, determination of development parameters, public participation, preparation of documentation, evaluation

of the proposals submitted and the recommendation to Council in respect of awarding the tender or proposal call. The normal Supply Chain Policy processes must be followed.

10.2.3.3 **Evaluation criteria for qualified or proposal call tenders:**

The determination of the criteria for the evaluation of proposals will be coordinated by the Bid Evaluation Committee. The basis of the criteria may include the aspects covered in “**annexure C**”.

Modifications and/or additions appropriate to site-specific issues and the particular goals and objectives of the development will be made on a project-by-project basis.

10.2.3.4 **Various development techniques:**

10.2.3.4.1 **Request for comments**

The procedure to follow when the municipality is **not certain** for which purpose or development it envisages a portion of land to be utilized, is to advertise for “**REQUEST FOR COMMENTS**” where all interested parties can submit comments to the municipality in order for the municipality to ascertain what kind of development should be considered.

When the municipality has applied its mind and determined the kind of development that will be feasible, a **two-stage bidding process** is one option that can be considered.

10.2.3.4.2 **Two-stage bidding process**

The Supply Chain Management Policy under section 25 makes provision for such a process:

Two-stage bidding process:

- 10.2.3.4.2.1 A two-stage bidding process is allowed for –
- 10.2.3.4.2.1.1 large complex projects;
- 10.2.3.4.2.1.2 projects where it may be undesirable to prepare complete detailed technical specifications; or
- 10.2.3.4.2.1.3 long term projects with a duration period exceeding three years.

10.2.3.4.2.2 In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.

10.2.3.4.2.3 In the second stage final technical proposals and priced bids should be invited.

10.2.3.4.3 **Request for qualification**

As the potential of strategic properties are vast, **Requests for Qualifications** (RFQ's) will need to be called for to identify entities that will be allowed to submit formal development proposals.

On this basis -

10.2.3.4.3.1 The submission of a RFQ requires minimum financial inputs from a tenderer.

10.2.3.4.3.2 Tenderers without the necessary experience and expertise can be eliminated

before the submission of a formal development proposal.

10.2.3.4.3.3 The adjudication criteria of the RFQ's will be determined by the Council prior to advertising for proposals and may be based for example on the following criteria:

Experience and expertise of the entity	50 points
HDI's	20 points
Women	5 points
Disabled	5 points
Development concept	20 points
Maximum points	100 points

The disposal may include selling, leasing or concessions.

10.2.3.4.4 **Request for development proposals**

Tenderers qualifying after the adjudication of the RFQ's will be invited to submit formal development proposals, "REQUEST FOR DEVELOPMENT PROPOSALS". This process need not to be a two-stage process. In the instance where a single-stage process is followed, it must be clearly stipulated that the proposals of tenderers not qualifying the first adjudication will not be considered in the following stage of adjudication.

The adjudication of the formal proposals will however have to be based on pre-determined criteria of which the following is an example:

Price (capital or income stream)	50 points
Concept plan	15 points
Financial viability	15 points
Socio-economic objectives	20 points
Maximum	100 points

The Municipality is not bound to use any or all of the adjudication techniques outlined above.

10.2.3.5 **Adjudication of proposals where requests for qualifications do not apply**

Unless otherwise determined in this policy, the awarding of tenders or proposal calls shall be adjudicated on a maximum One Hundred (100) points system set out as follows:

10.2.3.5.1 **Price.**

Fifty (50) points maximum. The highest financial offer shall score Fifty (50) points with lower offers scoring proportionately in relation to the highest offer.

10.2.3.5.2 **Status.**

Twenty (20) points, which shall be measured and compiled as follows:

10.2.3.5.2.1 Twenty (20) points for HDI's and legal entities.

10.2.3.5.2.2 No points for women.

10.2.3.5.2.3 No points for the Disabled of all races.

10.2.3.5.3 **Economic and Social Empowerment.**

Ten (10) points maximum, which shall be measured on Job Creation, Community Upliftment Contribution, Social Housing, Community integration and access to services and Environmental and Cultural benefits.

10.2.3.5.4 **Development Concept.**

Twenty (20) points maximum, which shall be measured and adjudicated as per the provisions of clause 9.2.4.3 herein.

10.3 GENERAL

10.3.1 In exceptional cases where the Council is of the opinion that it is in the interest of the Council, the community and that it serves the Council's Strategic Objectives, viable immovable property may be sold or let by other method/criteria than that set out in paragraph 9.2 above.

10.3.2 Failure by tenderers to complete the required sworn statements and submit same with the tender will lead to such tenderer not qualifying for the relevant criteria points.

10.3.3 Tenders shall be disqualified in the following circumstances:

10.3.3.1 If the tender document is not responsive;

10.3.3.2 Any tender received after the prescribed closing date;

10.3.3.3 Non-disclosure and failure to submit prescribed documentation or plans with the tender.

10.4 If a property is sold to a person who benefits in terms of the economic empowerment objectives he / she will not be allowed to dispose of the property within a period of 3 years from the date of transfer of ownership, subject to prior written approval by the Municipality.

11 RESPONSIBILITY AND ACCOUNTABILITY

11.1 As accounting officer of the municipality, the municipal manager shall be the principal custodian of all the municipality's fixed assets, and shall be responsible for ensuring that the fixed asset management policy is applied and adhered to.

11.2 The chief financial officer shall be the custodian of the fixed asset register of the municipality, and shall ensure that a complete, accurate and up-to-date computerised fixed asset register is maintained. No amendments, deletions or additions to the fixed asset register shall be made other than by the chief financial officer or by an official acting under the written instruction of the chief financial officer.

11.3 Although certain responsibilities are allocated to certain levels of management, within the asset management policy, the ultimate responsibility to ensure control over each asset in terms of the policy remains with Directors of Departments.

11.4 The chief financial officer and where necessary his/her duly designated official shall -

11.4.1 ensure implementation of the approved policy;

11.4.2 verify assets in possession of the Council annually;

11.4.3 report in writing all asset losses to the Council.

11.5 Reporting on emerging issues

Each director should as and when reasonably necessary report to the municipal

manager on issues that may significantly impede on asset's capabilities to provide the required level of service or economic benefit.

12 FIXED ASSET REGISTER

- 12.1 The fixed asset register shall be maintained in the format determined by the chief financial officer, which format shall comply with the requirements of GRAP, GAMAP and any other accounting requirements which may be prescribed. The fixed asset register shall reflect the following information:
- 12.1.1 a brief but meaningful description of each property;
 - 12.1.2 the date on which the asset was acquired or brought into use; 11.1.3 the location of the property;
 - 12.1.3 the department(s) or vote(s) within which the assets will be used;
 - 12.1.4 the title deed number;
 - 12.1.5 the stand number;
 - 12.1.6 the original cost, or the revalued amount determined or the fair value if no costs are available;
 - 12.1.7 the (last) revaluation date of the fixed assets subject to revaluation;
 - 12.1.8 the revalued value of such fixed assets;
 - 12.1.9 who did the (last) revaluation;
 - 12.1.10 accumulated depreciation to date;
 - 12.1.11 the depreciation charge for the current financial year;
 - 12.1.12 the carrying value of the asset;
 - 12.1.13 the method and rate of depreciation;
 - 12.1.14 the source of financing;
 - 12.1.15 the current insurance arrangements;
 - 12.1.16 whether the asset is required to perform basic municipal services;
 - 12.1.17 whether the asset has been used to secure any debt, and if so the nature and duration of such security arrangements;
 - 12.1.18 the date on which the asset is disposed of, if applicable;
 - 12.1.19 the disposal price;
 - 12.1.20 the original useful life;
 - 12.1.21 the revised useful life;
 - 12.1.22 the residual value;
 - 12.1.23 method of calculating recoverable amount (when impairment tests are required in terms of GRAP);
 - 12.1.24 any restrictions on title to the asset;
 - 12.1.25 condition of the asset.
- 12.2 All Directors of Department under whose control any fixed asset falls shall promptly provide the chief financial officer in writing with any information required to compile the fixed asset register, and shall promptly advise the chief financial officer in writing

of any material change which may occur in respect of such information.

- 12.3 Any land or buildings owned or acquired by the municipality with the intention of selling such property in the ordinary course of business, or any land or buildings owned or acquired by the municipality with the intention of developing such property for the purpose of selling it in the ordinary course of business, shall be recorded in the fixed assets register in the same manner as other fixed assets, but a separate section of the fixed assets register shall be maintained for this purpose.

13 RECOGNITION OF ASSETS

13.1 Heritage assets

If no original costs or fair values are available in the case of one or more or all heritage assets, the chief financial officer may, if it is believed that the determination of a fair value for the assets in question will be a laborious or expensive undertaking, record such asset or assets in the fixed asset register without an indication of the costs or fair value concerned. For balance sheet purposes, the existence of such heritage assets shall be disclosed by means of an appropriate note.

13.2 Donated assets

Where a fixed asset is donated to the municipality, or a fixed asset is acquired by means of an exchange of assets between the municipality and one or more other parties, the asset concerned shall be recorded in the fixed asset register at its fair value, as determined by the chief financial officer.

14 PROCEDURES

14.1 General requirements

- 14.1.1 In order to record the acquisition or disposal of assets, the Asset Control Section must be notified by the department doing the acquisition or disposal **within 14 days** of any of the following possible movements:

14.1.1.1 Purchases

14.1.1.2 Donations

14.1.1.3 Additions/Improvements

14.1.1.4 Auctions

14.1.1.5 Loss or damage

14.1.1.6 Transfers

14.1.1.7 Land Sales

14.2 Destruction or impairment of fixed assets

Every Director of a department shall ensure that any incident of destruction or material impairment of any fixed asset controlled or used by the department in question is promptly reported in writing to the chief financial officer and to the internal auditor.

14.3 **Disposal of assets**

Every Director of a department shall report in writing to the chief financial officer on all fixed assets controlled or used by the department concerned which such head of department wishes to have alienated by public auction or public tender.

14.4 **Additions/improvements**

Depending upon the type of addition or improvement to a specific asset the responsible department must notify the Asset Control Section of the change in status. The asset will be recorded at its increased value on receipt of the required asset form from the responsible department.

When capital expenditure is incurred for any enhancement/improvement of an asset, the department shall complete the necessary form and forward it to the Asset Control Section.

When any changes to vacant land or land and buildings are effected such as subdivision, transfer, change in extent or change in conditions of title the department concerned must complete the relevant forms and forward it to the Asset Control Section.

14.5 **Acquisition of assets**

14.5.1 The municipality may acquire by purchase, or by hire, immovable property within or outside the municipal boundary provided it complies with the requirements of the MFMA and the Supply Chain Management Legislation and subject to the following:

14.5.1.1 The cost of the purchase or hire had been budgeted for; and

14.5.1.2 The intention to buy or hire the immovable property had been advertised for public comment.

14.5.1.3 After consideration of any public comments/objections the Council will:-

14.5.1.3.1 In the case of the following paragraph comply with the requirements of that paragraph; and

14.5.1.3.2 In the case of all other immovable property, finally resolve to continue with the purchase or hire and apply the supply chain management processes

14.5.1.4 The Municipality will not continue with the purchase or hire of any immovable property where:

14.5.1.4.1 The price is in excess of the market value thereof as assessed by an appraiser; or

14.5.1.4.2 The rental which, when calculated per annum in the case of immovable property, exceeds twelve percent of the market value of the property as assessed by an appraiser.

14.5.2 The Municipality may accept a gift or conveyance of immovable property either for the municipality or in trust for charitable or other public purposes not connected with public worship, and hold the same in such trust or for such purpose as may be declared by such donors and may administer, utilize and improve such property.

15 VALUATION OF ASSETS

15.1 Land and buildings

15.1.1 All land and buildings recorded in the municipality's fixed asset register shall be revalued with the adoption by the municipality of each new valuation roll (or, if the land and buildings concerned fall within the boundary of another municipality, with the adoption by such municipality of each new valuation roll). The Municipality may, however, at any time when it regards it necessary for purposes of the management of its land and buildings have all or any of its land and buildings revalued.

15.1.2 The chief financial officer shall adjust the carrying value of the land and buildings concerned to reflect in each instance the value of the fixed asset as recorded in the valuation roll, provided the chief financial officer is satisfied that such value reflects the fair value of the fixed asset concerned. The chief financial officer shall also, where applicable, create a revaluation reserve for each such fixed asset equal to the difference between the value as recorded in the valuation roll and the carrying value of the fixed asset before the adjustment in question. The fixed asset concerned shall, in the case of buildings, thereafter be depreciated on the basis of its revalued amount, over its remaining useful operating life, and such increased depreciation expenses shall be budgeted for and debited against the appropriate line item in the department or vote controlling or using the fixed asset in question.

15.1.3 The chief financial officer shall ensure that an amount equal to the difference between the new (enhanced) monthly depreciation expense and the depreciation expenses determined in respect of such fixed asset before the revaluation in question is transferred each month from the revaluation reserve to the municipality's appropriation account. An adjustment of the aggregate transfer shall be made at the end of each financial year, if necessary.

15.1.4 If the amount recorded on the valuation roll is less than the carrying value of the fixed asset recorded in the fixed asset register, the chief financial officer shall adjust the carrying value of such asset by increasing the accumulated depreciation of the fixed asset in question by an amount sufficient to adjust the carrying value to the value as recorded in the valuation roll. Such additional depreciation expenses shall form a charge, in the first instance, against the balance in any revaluation reserve previously created for such asset, and to the extent that such balance is insufficient to bear the charge concerned, an immediate additional charge against the department or vote controlling or using the asset in question. Revalued land and buildings shall be carried in the fixed asset register, and recorded in the annual financial statements, at their revalued amount, less accumulated depreciation (in the case of buildings).

16 INSURANCE OF ASSETS

The Finance Department shall ensure that all the immovable properties are accurately insured. The municipal manager shall recommend to the council, after consulting with the chief financial officer, the basis of the insurance to be applied to each type of fixed asset:

either the carrying value or the replacement value of the fixed assets concerned.

Such recommendation shall take due cognisance of the budgetary resources of the municipality. The chief financial officer shall annually submit a report to the council on any reinsurance cover which it is deemed necessary to procure for the municipality's self-insurance reserve.

17 ASSET LIVES AND DIMINUTION IN THE VALUE OF FIXED ASSETS

Only the chief financial officer may amend the useful operating life assigned to any fixed asset, and when any material amendment occurs the chief financial officer shall inform the council of such amendment. The chief financial officer shall amend the useful operating life assigned to any fixed asset if it becomes known that such asset has been materially impaired or improperly maintained to such an extent that its useful operating life will not be attained, or any other event has occurred which materially affects the pattern in which the asset's economic benefits or service potential will be consumed.

18 RELATED POLICIES

This policy must be read in conjunction with any other applicable policies of the Municipality. Should this policy be in conflict with any of the Municipal policies, this policy shall be given effect to unless it shall result in the transgression of any law or measure having the force of law.

19 COMMENCEMENT

This policy shall be implemented once approved by the Council.

20 EXCHANGE OF IMMOVABLE PROPERTY

Where it is in the interest of the Municipality immovable property portfolio, the Municipality may exchange a property with immovable property of a private owner, subject thereto that the property is either equal in size or in value.

21 REVISION

This policy must be reviewed whenever it is required in terms of operational or statutory changes or as a result of audit requirements or changes in the directing interpretation set out in **annexure A**.

Statutory requirements and directing interpretations

(paragraph 5.3)

1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (ACT 108 OF 1996) ("THE CONSTITUTION") Section 25(5) of the Bill of Rights of the Constitution provides that the state must take reasonable legislative and other measures, within its available resources, to foster conditions, which enable citizens to gain access to land on an equitable basis.

2 THE LOCAL GOVERNMENT : MUNICIPAL FINANCE MANAGEMENT ACT, 2003 (ACT 56 OF 2003) AND THE NATIONAL TREASURY REGULATIONS

2.1 The MFMA and the National Treasury Regulations published in terms of Section 168 of the MFMA give effect to Sections 213 and 215 to 219 of the Constitution and prevail over all other legislation except the Constitution.

2.2 The Council 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 services. The Council may transfer ownership or otherwise dispose of capital assets not needed to provide the minimum level of basic services only after it resolved on reasonable grounds at a meeting that was open to the public on the following grounds:

- (a) that the asset is not needed to provide the minimum level of basic municipal services; and
- (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

A decision by the council that a specific asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the council after the asset is being sold, transferred or otherwise disposed of.

2.3 Although Section 14(2)(b) of the MFMA (which requires of the Council to consider the fair market value of the asset and economic and community value to be received in exchange for the asset) leaves the impression that such decision can be taken before the asset concerned is disposed of, it is submitted that Council will only after receipt of appropriate offers for the land concerned, be in a position to give effect to Section 14(2)(b). The reason is simply that the economic value to be received in relation to the fair market value of the asset can only be assessed once Council has received a firm offer. The same applies to the requirement that Council has to consider the community value to be received in exchange for the asset. Otherwise the price and other terms have to be determined in advance and the property may not be disposed of on more favorable terms to the buyer.

2.4 As the Act does not define the term "community value" the expression should be given its ordinary grammatical meaning. Due to its reference to 'community', the expression must be taken to have a wide meaning.

- 2.5 In terms of subsection (5) of Section 14 of the MFMA the transfer of ownership of immovable assets 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."

Section 110(1)(b) specifically provides that Chapter 2 (of which the aforesaid Section 111 forms part) applies to the disposal by a Municipality of goods no longer needed. Although 'land' would normally not be referred to as "goods", subsection (3) of Section 110 provides that "*The disposal of goods by a municipality or municipal entity in terms of this Part must be read with Sections 14 and 90.*" If it was not for subsection (5) of Section 14 it could have been argued that the disposal of land should be treated different from other goods. Subsection (5), however, specifically refers to the transfer of ownership of 'a capital asset' (which includes land) and goes on to provide that the transfer of ownership of a capital asset must be consistent with the Supply Chain Management Policy ("**SCMP**") in terms of Section 111. The Eden District Municipality's Supply Chain Management Policy (Section 40(2)(e)(ii)) takes the procedure one step further by providing that, for the sale of land and buildings "*The same procedures for advertisement, valuation and adjudication will apply as for procurement, including application of the Preferential Procurement Policy Act and Regulations*".

- 2.6 As regards the criteria as such, cognizance must be taken of paragraph 40(2)(e)(ii) of the SCMP in terms of which the provisions of the Preferential Procurement Policy Framework Act and Regulations have been incorporated by reference. It also needs to be pointed out that in terms of Section 2(3) of the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations "*No municipality... may act otherwise than in accordance with its Supply Chain Management Policy when disposing of goods no longer needed.*" Section 40(2)(b)(i) of the said Regulations provide that the SCMP must stipulate that immovable property may be sold only at market-related prices except when the public interest or the plight of the poor demands otherwise.

3 SECTION 124 OF THE WESTERN CAPE MUNICIPAL ORDINANCE, 1974 (ORDINANCE NO 20 OF 1974) ("THE ORDINANCE")

To the extent to which Section 124 of the Ordinance pertains to the alienation of municipal land, it has been replaced by the provisions of the MFMA, with reference in particular to Section 14 of the MFMA. This implies that neither the procedures nor the principles entrenched in Section 124 of the Ordinance have to be complied with in the alienation of municipal land, but the Municipality must instead comply with the provisions of Section 14 of the MFMA.

4 THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 5 OF 2000 ("THE PPPFA") (read with the Constitution)

The clear wording of Section 217(1) of the Constitution makes it applicable only to instances where goods or services are contracted for (i.e. acquired or obtained) and not where such goods are disposed of or such services are rendered by the Municipality.

The word 'goods' as used in Section 217(1) of the Constitution does not include land or immovable property.

On the basis that Section 217(1) of the Constitution does not apply to immovable property, and in

particular to the disposal thereof by a Municipality, it has to follow that the PPPFA does not apply to the disposal of immovable property.

5 THE PREFERENTIAL PROCUREMENT REGULATIONS OF 2001 ("THE PPR")

Based on the empowering provisions in terms of which the PPR were promulgated as well as the definitions of 'tender' and 'contract' contained in Section 1 of the PPR, the PPR does not apply to immovable property; and to the extent to which it purports to regulate the sale and letting of immovable property, it is *ultra vires* the provisions of Section 217 of the Constitution and Section 5 of the PPPFA.

6 EDEN DISTRICT MUNICIPALITY'S SUPPLY CHAIN MANAGEMENT POLICY

The restricted meaning of 'goods' as used in Section 217 of the Constitution and the fact that it applies to procurement only does not stand in the way of a conclusion that the supply chain management provisions of the MFMA also apply to immovable property. In support of this conclusion, it should be noted that it is a requirement of Section 111 of the MFMA that the supply chain management policy must give effect to the provisions of 'This Part' (which includes both procurement and disposal of goods no longer needed) and that Section 110(3) links 'This Part' to Section 14 (which governs the disposal of capital assets).

7 THE SUPPLY CHAIN REGULATIONS

The Supply Chain Regulations (with reference in particular to Section 40 thereof) correctly so, do not require that the PPPFA must be complied with in the event of the disposal of municipal land. (In this regard it has to be noted that Sections 27 ("bid specification committees"), 28 ("bid evaluation committees") and 29 ("bid adjudication committees") of the Supply Chain Regulations in clear terms pertain only to "procurement of goods or services", "procurement" and "relevant procurement". On that basis they also do not make the provisions of the PPPFA applicable to the disposal of municipal land. However, the Municipality chose to make the PPPFA applicable through incorporation by reference.

8 THE SELLING OF MUNICIPAL LAND TO A PERSON IN THE SERVICE OF THE STATE

Section 44 of the Supply Chain Regulations, on the face of it, prohibits the selling of municipal land to persons in the service of the state. However, as a result in particular of the phrase "irrespective of the procurement process followed" as it appears in Section 44 of the Supply Chain Regulations it has the effect of rendering section 44 inapplicable to the selling of municipal land to persons in the service of the State. Otherwise stated, as far as the Supply Chain Regulations are concerned, municipal land may be sold to persons in the service of the state.

Unlike Section 44 of the Supply Chain Regulations, Section 44 of the Eden District Municipality's supply chain management policy prohibits the selling of municipal land to persons in the service of the state. This is due to the difference in wording between section 44 of the Supply Chain Regulations and the comparative paragraph 44 of the Eden District Municipality's supply chain management policy.

9 THE PROVINCIAL GOVERNMENT'S DIRECTIVES OF 17TH MAY 1993 (CIRCULAR 4/1 993 REGARDING THE DISPOSAL AND LETTING OF MUNICIPAL LAND) ON SECTION 124 OF THE ORDINANCE

The circular has in respect of the disposal of municipal land, effectively been replaced with the new order statutes. To the extent to which the circular contained enabling provisions, the municipality may (of choice) act in accordance therewith to the extent to which it is not in conflict with the new order statutes. To the extent to which the circular is peremptory, the municipality may

(of choice) act in accordance therewith : Provided that if such peremptory provisions are in conflict with the new order statutes, effect must be given to the new order statutes. The circular has effectively by operation of law been superseded by the new order statutes.

10 THE DETERMINATION OF WHAT IS IN THE "PUBLIC INTEREST" WHEN MUNICIPAL LAND IS DISPOSED OF AND WHAT FACTORS MUST OR MAY BE TAKEN INTO ACCOUNT IN DECIDING ON THE DISPOSAL

Both section 40(2)(b)(i) of the SCMR and paragraph 40(2)(b)(i) of the SCMP provides that property must be sold at market related prices except when the public interest demands otherwise.

The Municipality must in each case determine the public interest factors to be taken into account when it is decided to sell immovable property at a price lower than the market related price. In this regard public interest factors relating to the Municipality's area of jurisdiction should prevail. The 'public interest' exception provided for in the Supply Chain Regulations and the Eden District Municipality's supply chain management policy cannot override a prohibition that immovable property may for example not be sold to a person to whom a bid may not be awarded in terms of paragraph 44 of the Eden District Municipality supply chain management policy (viz. the prohibition on awards to persons in the service of the State/Municipality). It may, however, for example be in the public interest to sell immovable property below its market related price for educational purposes if it would be in the public interest to have an educational institution established within the Municipality's area of jurisdiction. The Municipality will in each case have to access the relevant public interest factors concerned.

11 PROCEDURES TO BE FOLLOWED WHEN SMALL PIECES OF LAND SUCH AS SANITARY LANES AND ODD PIECES OF LAND ARE DISPOSED OF

Due to Section 14(5) of the MFMA any transfer (including that of odd pieces of land) must comply with the requirements of fairness, equitability, transparency and competitiveness. The section does not make provision for any exceptions.

12 PROCEDURES TO BE FOLLOWED IN THE LETTING OF MUNICIPAL LAND

Except for the requirements that immovable property must be let at market related rates except when the public interest or the plight of the poor demands otherwise and that fees, charges, rates and tariffs relating to the letting of immovable property are to be reviewed annually, the supply chain management policy does not contain clear provisions on the letting of immovable property.

The conclusions otherwise arrived at in connection with the disposal of immovable property, apply *mutatis mutandis* to the letting of immovable property.

13 THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT 19 OF 1998

The **Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998** provides for the prohibition of unlawful eviction and sets out procedures for the lawful eviction of unlawful occupiers.

14 THE EXTENSION OF SECURITY OF TENURE ACT 62 OF 1997

The **Extension of Security of Tenure Act 62 of 1997** facilitates the provision of long term security of

land tenure, to regulate the conditions of residence on certain land, the conditions on and circumstances under which the right of persons to reside on land may be terminated and the conditions and circumstances under which persons, whose right of residence has been terminated may be evicted from land.

15 THE RESTITUTION OF LAND RIGHTS ACT 22 OF 1994

The **Restitution of Land Rights Act 22 of 1994** provides for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices as well as to establish a Commission on Restitution of Land Rights and a Land Claims Court.

16 HOUSING ACT NO 107 OF 1997

The Act provides that local spheres of government (i.e. Municipalities) must give priority to the needs of the poor in respect of housing development. This provision must in particular be read with section 14 of the MFMA referred to hereinbefore.

17 MUNICIPAL ASSET TRANSFER REGULATIONS, 2008

- 17.1 In terms of section 5 of the Municipal Asset Transfer Regulations, any disposal by the Municipality of a high value asset (i.e. an asset with a value of more than R50 million, or 1% of the total value of the capital assets of the Municipality or if the combined value of any capital assets the Municipality intends to transfer or dispose of in any financial year exceeds 5% of the total value of its assets) shall only take place after a public participation process as provided for in the said regulations, has been followed.
- 17.2 In any disposal of immovable property, the Municipality shall take into account the requirements set out in sections 7, 12(5) and 13(2) of the Asset Transfer Regulations.
- 17.3 In terms of section 34 of the Asset Transfer Regulations, the Municipality shall not let or otherwise grant rights to the use, control or management of capital assets unless a public participation process has been conducted if the value of the capital asset concerned is in excess of R10 000 000-00 and the period of the agreement exceeds 3 (three) years.
- 17.4 The Municipality must, when it considers letting a property or otherwise granting rights to use, control or manage immovable property, take into account the matters set out in section 36 of the Capital Transfer Regulations and, in terms of section 41 thereof, grant the right only in accordance with the disposal management system of the Municipality unless the transaction is covered by the exemption referred to in section 41(2). Any agreement entered into by the Municipality must comply with the provisions of section 45(2).
- 17.5 Only leases and agreements for the granting of the right to use, control or manage immovable property for a period up to 1 (one) month is excluded from the provisions of the regulations. The Capital Transfer Regulations also do not apply to leases in terms of Private-Public Partnership agreements and rights on municipal land to housing for the poor to beneficiaries of such housing.
- 17.6 If the lease or other rights granted is for:
- (a) an indefinite or undetermined period, or
 - (b) the period exceeds the useful life or economic usefulness of the assets or

- (c) an option to buy or otherwise acquire ownership of the property is granted or
- (d) if the person acquires a right to use, control or manage the property as if he is the beneficial owner of the asset, the transaction must be treated in terms of the regulations pertaining to the transfer and permanent disposal of immovable property.

ANNEXURE “B”

THE LETTING OF IMMOVABLE PROPERTY

- 1 In accordance with the provisions of the Municipal Asset Transfer Regulations, a distinction is drawn between the procedures to be followed for the letting of immovable property for periods of
 - (a) one month or less,
 - (b) more than one month but not exceeding three years and
 - (c) longer than three years coupled with an asset value in excess of R1 0 000 000-00.

Leases for up to one month (“**incidental leases**”) and leases in excess of one month up to three years (“**short term leases**”) shall be approved by the accounting officer. Leases for a period of longer than three years (“**long term leases**”) and leases where the value of the immovable property is in excess of R1 0 000 000-00 (“**high value leases**”) shall be subject to approval by the Council.

- 2 All leases shall be at market related rates except when the public interest or the plight of the poor demands otherwise. For purposes hereof the provisions of paragraphs 8.8 and 8.9 of the policy document, shall apply mutatis mutandis.
- 3 The rates at which immovable property are let shall be annually reviewed, for purposes of which the accounting officer shall make recommendations to the Council. Leases concluded for periods in excess of one year shall, with due regard to market conditions, make provision for reasonable annual escalations of the rental.
- 4 Council may let immovable property for development purposes aligned with its strategic objectives.
- 5 All applications to lease immovable property must be considered in accordance with this policy framework and current legislation.
- 6 Unless otherwise provided herein, the letting of viable immovable property shall be affected by means of a process of public competition.

For the purpose of this policy, **viable** immovable property is property that can be developed and function as a separate entity on its own and can be registered as a separate entity by the Registrar of Deeds, and **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.

- 7 HDI’s, who are South African citizens, will in accordance with the provisions of Section 9(2) of the Constitution of the Republic of South Africa, 1996 be afforded a preference in respect of the letting of viable immovable properties.
- 8 In order to achieve the objective of broad based economic empowerment, Council may limit the number of leases per tenderer in the course of a tender process.
- 9 Council may entertain unsolicited bids for the lease of viable immovable property for development purposes, subject to Section 113 of the MFMA.
- 10 Non-viable streets, lanes, public open spaces and non-viable surplus immovable property may be let out-of-hand to adjoining owners. Unless otherwise provided herein, such immovable property shall be let at a fair market related value determined by a professional valuer. Leases for gardening purposes shall be at the tariff rental as approved by Council from time to time. No structures shall be permitted on immovable property let for gardening purposes except a perimeter enclosure acceptable to Council

and no parking shall be permitted although a driveway may cross the immovable property.

- 11** Immovable property may be let out-of-hand to social care users. Rentals shall be determined in terms of the tariff rentals as approved by Council from time to time and in such cases the lessee shall accept responsibility for maintenance of the immovable property and any improvements thereon.
- 12** Immovable property may be let out-of-hand to other spheres of government, other local authorities or municipal entities.
- 13** Sports facilities and other public amenities may be let out-of-hand to Sports Boards, Sports Federations and other similar bodies. Community based bodies and 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. The market value shall be based on the most likely alternative use for the site.
- 14** Out-of-hand letting of immovable property for outdoor seating to adjoining restaurant owners is permitted subject to statutory requirements being complied with and a professional valuer shall determine the market related rental.
- 15** Immovable properties that have been let shall be inspected at reasonable intervals to ensure compliance with the terms and conditions of the agreement of lease.
- 16** 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.
- 17** Council shall, where appropriate, let properties subject to the right to take back the property let, or portion thereof, and to cancel an existing lease in its entirety where such immovable property is required for operational purposes, in pursuance of Council's strategic objectives or in the interests of the community.
- 18** Tenants shall not be entitled to sub-lease the property or to cede their rights to a third party without the Municipality's prior written consent, provided that an owner of fixed immovable property who leases adjoining council immovable property may be substituted by his successor-in-title for the duration of the remainder of the lease period on the same terms and conditions unless otherwise determined.
- 19** 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, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services, valuation and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

ANNEXURE “C”

MINIMUM CRITERIA TO BE USED BY BID COMMITTEE TO EVALUATE PROPOSAL

1 THE PROPOSER

CRITERIA	INTENT OF CRITERIA
<ul style="list-style-type: none"> • Identification of the proponent • Identification of the development entity • Skills and experience in development field • Experience of professional team(s) • Relevant contractual arrangements or intent 	<ul style="list-style-type: none"> • Determination of the proposer’s ability to implement the proposal, based on an assessment of the developers skills and experience as well as that of the professional team(s)

2 EMPOWERMENT

CRITERIA	INTENT OF CRITERIA
<ul style="list-style-type: none"> • Equity share • Responsibilities of empowerment component • Distribution of equity • Participation in professional and / or technical team • Empowerment policy • Contracting and subcontracting marketing • Post construction employment • Job training • Social development proposals • SMME opportunities • Empowerment performance 	<ul style="list-style-type: none"> • Determination of the extent of empowerment and / or upliftment in the development process and ownership. Special emphasis will be placed on the spread of empowerment in equity distribution and the extent of ownership and involvement of people from the local and / or previously disadvantaged communities in any and / or all of the following matters, namely: • Equity in the development entity • Participation in the professional and / or technical team • Participation in the construction field • Marketing of the development

3 THE PROPOSAL

CRITERIA	INTENT OF CRITERIA
<ul style="list-style-type: none"> • Design concept • Compatibility with Council’s strategic objectives • Compatibility with functional guidelines • Range of housing densities • Residential income mix 	<ul style="list-style-type: none"> • Determination of the extent to which the proposed development is in line with the goals, objectives and the development parameters set in the proposal call. The planning and design criteria indicate specific concerns with the aspects of the development control and quality of development are addressed.

4 PLANNING & DESIGN

CRITERIA	INTENT OF CRITERIA
<ul style="list-style-type: none"> • Physical layout • Land use and density • Traffic impact and parking • Urban design guidelines • Pedestrian movement • Public and private space allocations • Bulk and form • Public facility provision • Public transport provision • Landscape proposals • Streetscape illustrations. 	<ul style="list-style-type: none"> • Determination of the extent to which the proposed development is in line with the goals, objectives and the development parameters set in the proposal call. The planning and design criteria indicate specific concerns with the aspects of the development control and quality of development are addressed.

5 VIABILITY PROSPECTS & PROGRAMMES

CRITERIA	INTENT OF CRITERIA
<ul style="list-style-type: none"> • Marketing feasibility • Proposed tenant mix • Rent ability and rental structure • Tenants secured • Estimated cost • Investment yield • Likelihood of proceeding • Phasing • Phase 1 program 	<ul style="list-style-type: none"> • Determination of the feasibility and viability of the proposal including determination of the extent to which implementation has been thoroughly thought through and if all components of the process have been included. Moreover, to determine a timeline for the council seeing delivery of the development.

6 FINANCIAL PROPOSAL

CRITERIA	INTENT OF CRITERIA
<ul style="list-style-type: none"> • Method of financing • Indication of financial capacity (bankers reports) • Financial offer • Infrastructure cost provision • Guarantees. 	<ul style="list-style-type: none"> • Determination of the extent and comprehensiveness of the financial offer as well as an indication of the developers capacity to raise project financing.