

DRAFT POLICY ON

SOCIAL AND ECONOMIC TRANSFORMATION

IN RESPECT TO

LAND LEASING AND DISPOSAL BY THE MUNICIPALITY

MAY 2022

VISION

By 2036 Ray Nkonyeni Local Municipal area will be a Prime Tourist-Friendly, Economically Diversified and Smart Municipality with Equitable Access to Opportunities and Services in a Safe and Healthy Environment.

MISSION STATEMENT

The Municipality is committed to create an enabling environment for the establishment of Agricultural, Maritime, Leading Tourism and Industrial Hubs to create Business and Employment Opportunities for Sustainable Development and Improved Quality of lives through shared vision, Smart Service Delivery Solutions and Collaboration with Stakeholders.

MUNICIPAL'S 20-YEAR STRATEGIC GROWTH AND DEVELOPMENT PLAN
STRATEGIC GOAL: DIVERSE AND INCLUSIVE ECONOMY

As a conceptual response to its current challenges and envisaged future, the Municipality has defined the urgent need to promote diversified and inclusive economy within its area of jurisdiction.



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1. PREAMBLE

- 1.1 WHEREAS Council considered and approved its 20-year Strategic Growth and Development Plan (2036 Vision).
- 1.2 WHEREAS Council wished to achieve its 2036 Vision by implementing, as one of its seven (7) Strategic Goals, the promotion of diversified and inclusive economy.
- 1.3 WHEREAS Council is the custodian of the Municipal Capital Assets of the Ray Nkonyeni Municipality and is responsible for the administration thereof.
- 1.4 WHEREAS Council is the appointed Managing Agent by various spheres of government (Provincial and National) to manage, leasing and disposal of immovable properties therefrom.
- 1.5 WHEREAS Council is entrusted with legislated responsibilities to promote, manage, maintain environmental acceptable standards within the immovable assets it owns and those it manages on behalf of others.
- 1.6 AND WHEREAS Council is empowered in the exercise of its powers, duties and functions, Council has the right to acquire, hold, bequeath, lease, and alienate immovable property in terms of the Municipal Finance Management Act 2003 (Act No. 56 of 2003) and other **applicable** legislations.
- 1.7 AND WHEREAS Council realises that Municipal Capital Assets held by it which is not envisaged for or already used for public purposes and/or in the public's interest, should be dealt with in a manner which will ensure the greatest benefit to the strategic objectives of Council in consultation with the community.
- 1.8 WHEREAS Council wishes to provide a policy framework for the granting of right to use, control or management of the Municipal Capital Assets and those other Capital Assets owned by other spheres of government whereby the Municipality acts as their Managing Agent



- 1.9 WHEREAS Council wishes to develop such policy framework in a manner that primarily promotes Broad Based Black Economic Empowerment through property ownership, development, use, control or management as well as first time entry of black people (a generic term meaning Africans, Coloureds and Indians), into the property market; to serve as a catalyst for local economic and social development, social integration, building strong, integrated communities and redressing the spatial inequalities of the past; to establish criteria for determining various categories of immovable property in order to regulate its use, control or management.
- 1.10 AND WHEREAS Council acknowledges and recognises that other legislative requirements maybe applicable where it manages and leasing immovable assets of other spheres, in such case, those applicable legislative and regulatory prescripts will apply.

2. INTRODUCTION AND CONTEXTUAL BACKGROUND

- 2.1 Section 152 of the RSA Constitution (Act 108 of 1996, as amended) entrusted the Municipality with the responsibility to promote social and economic development.
- 2.2 As part of its 2036 Vision, the Ray Nkonyeni Municipality identified the need to promote a diversified and inclusive economy as one of its seven strategic goals. The primary aim is to redress the historical imbalances and exclusions of the majority of the South African population in the key sectors of the mainstream economy.
- 2.3 The aim of this document is not only to redress the historical imbalances and inequalities by a way of promotion of meaningful participation of the historical deprived groups, but to realise the untapped economic potential of these Municipal Capital Assets (and/or immovable assets of other spheres of government wherein the Municipality has been appointed as their Managing Agent) and facilitation of sustainable economic growth which can generate quality employment opportunities.



- 2.4 The Municipality has identified some of its Capital Assets, and those it manages on behalf of other spheres of government, as an area that can contribute towards the achievement of this strategic goal.

3. DEFINITIONS

In this document, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Municipal Finance Management Act, 2003 (Act No. 56 2003), Municipal Policy on the Management and Disposal of Immovable Properties, Municipal Asset Management Policy, and Local Government: Municipal Finance Management Act, 2003: Municipal Asset Transfer Regulations, has the meaning so assigned.

- 3.1. "**Admiralty Reserve**" means any strip of state-owned land adjoining the inland side of the high-water mark [generally measuring 150 – 200 feet (45 to 60m) wide, and is not continuous line along the Coast, but only officially present where the land is State land or described as such in the Title of such land] and includes land reserved or designated on an official plan, deed of grant, title deed or other document that demonstrates title or land use rights as 'government reserve', 'beach reserve', 'coastal forest reserve' or other similar reserve owned by the State.

- 3.2. "**Beneficial Ownership**" means "beneficial owner in respect of a legal person (a natural person) who, independently or together with another person, directly or indirectly:

(a) owns the legal person; or

(b) exercises effective control of the legal person."

This meaning assigned herein should be linked with beneficiary interest(s) as defined in Companies Act (Act No. 71 of 2008).

- 3.3. "**black people**" means African, Natural persons who are African, Coloured or Indian (as well as certain persons of Chinese descent) who:

- are citizens of the Republic of South Africa by birth or descent; or
- became citizens of South Africa by naturalisation:



- before 27 April 1994; or
- on or after 27 April 1994 and would have been entitled to acquire citizenship by naturalisation before that date

3.4. **“broad-based black economic empowerment”** means 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:

- Increasing the number of black people that manage, own and control enterprises and productive assets with particular reference to preferential population groups.
- Facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises.
- Human resource and skills development.
- Achieving equitable representation in all occupational categories and levels in the workforce.
- Preferential procurement
- Investment in enterprises that are owned or managed by black people.

3.5 **“Council”** means the Municipal Council of the Ray Nkonyeni Municipality, its legal successors in title and its delegated Committees.

3.6 **"Capital Asset"** means

- (a) any immovable asset such as land, property or buildings; or
- (b) any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods or services, for rental to others or for administrative purposes, and from which future economic or social benefit can be derived.

3.7 **“Coastal set-back line”** means a line determined by an MEC in accordance with section 25 of the National Environment Management: Integrated Coastal Management Act (Act No. 24 of 2008) in order to demarcate an area within which development will be prohibited or controlled in order to achieve the objects of this Act or coastal 10 management objectives.



- 3.8 **"Commercial Service"** means a service other than a municipal service -
- (a) rendered by a private sector party or organ of state to or for a municipality or municipal entity on a commercial basis; and
 - (b) which is procured by the municipality or municipal entity through its supply chain management policy.
- 3.9 **"depreciated replacement cost"**, in relation to a capital asset, means an amount equivalent to the cost to replace the Capital Asset on the date of transfer adjusted by a deemed depreciated cost at the date of the transfer taking into account the age and condition of the asset.
- 3.10 **"exempted capital asset"**, means a municipal capital asset which is exempted by section 14(6) or 90(6) of the Act from the other provisions of that section. This refers to the transfer of a capital asset to another organ of state (Municipality/Municipal entity, Provincial and National Government) in circumstances and in respect of categories of assets approved by the National Treasury, provided that such transfers are in accordance with a prescribed framework. This should be read in the context of Chapter 3 of the Municipal Asset Transfer Regulations issued in terms of Local Government: Municipal Finance Management Act, Act 56 of 2003.
- 3.12 **"Granting of right to use, control or manage"** - This should be read in the context of Chapter 4 of the Municipal Asset Transfer Regulations issued in terms of Local Government: Municipal Finance Management Act, Act 56 of 2003.
- 3.13 **"Lease Agreement"** shall mean a contract between a Lessor and Lessee that allows the Lessee rights to the use of a property owned or managed by the Lessor for a period of time. The agreement does not provide ownership rights to the Lessee; however, the Lessor may grant certain allowances to modify, change or otherwise adapt the property to suit the needs of the Lessee.
- 3.14 **"Minimum level of basic municipal services"** - Should be read with Parts B of both Schedule 4 and 5 of the RSA Constitution (Act 108 of 1996, as amended). It refers to a municipal service that is necessary to ensure an acceptable and



reasonable quality of life and which, if not provided, would endanger public health or safety of the environment.

- 3.15 “**non-exempted capital asset**”, means a municipal capital asset which is not exempted by section 14(6) or 90(6) of the Act from the other provisions of that section. This should be read in the context of Chapter 2 of the Municipal Asset Transfer Regulations issued in terms of Local Government: Municipal Finance Management Act, Act 56 of 2003.
- 3.16 “**Rental**” shall mean the applicable Market Rental payable by a Lessee as determined by a Professional Valuer on a monthly or annual basis including any rental discounts (if applicable).
- 3.17 “**Valuation**” shall mean the determination of the Market Value of municipal immovable property (or portion thereof) and the applicable Market Rental.

4. LEGISLATIVE AND REGULATORY FRAMEWORK

In giving effect of this document, the Municipality shall adhere and comply with the legislative framework referred to hereunder:

- (a) **Constitution of the Republic of South Africa (Act No. 108 of 1996, as amended).**
- This is the Supreme Law of the Republic of South Africa. Any law or conduct which is inconsistent with it is invalid.
 - Chapter 7 makes provision for the establishment of Local Government, which is the local sphere of government, which is distinctive, interdependent, and interrelated to the other spheres (Provincial and National).
 - Section 152(1) sets out the objects of the local government as follows:
 - (a) to provide democratic and accountable government for local communities.
 - (b) to ensure the provision of services to communities in a sustainable manner.
 - (c) to promote social and economic development.
 - (d) to promote a safe and healthy environment; and
 - (e) to encourage the involvement of communities and community organisations in the matters of local government.
 - Section 152(2) provide for a municipality to strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).



- (b) **Municipal Finance Management Act, Act No. 56 of 2003 and its Regulations**
- This Act intends to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government.
 - It also establishes treasury norms and standards for the local sphere of government.
 - It also empowers both Provincial and National Treasuries to issue Regulations and Guidelines in respect of any matter prescribed by the Act and other incidental matters.
- (c) **Preferential Procurement Policy Framework Act, Act No. 5 of 2000 and its Regulations**
- This Act intends to give effect to section 217(3) of the Constitution by providing a framework for the implementation of the procurement policy contemplated in section 217(2) of the Constitution
 - Section 217 (1) of the Constitution provides for the five principles public procurement must comply with. That is, i) Equity, ii) Transparency, iii) Competitiveness, iv) Cost-effectiveness and value for money.
 - Section 217(2) provide that subsection 1 of Section 217 does not prevents the organs of state from implementing a procurement policy for:
 - categories of preference in the allocation of contracts; and
 - the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- (d) **Government Immovable Asset Management Act, (Act No. 19 of 2007, as amended)**
- This Act provide for a uniform framework for the management of an immovable asset that is held or used by a national or provincial department.
 - It also ensures the coordination of the use of an immovable asset with the service delivery objectives of a national or provincial department to provide for issuing of guidelines and minimum standards in respect of immovable asset management by a national or provincial department; and to provide for matters incidental thereto.
- (e) **Broad Based Black Economic Empowerment Act, Act No. 53 of 2003 and various Codes of Good Practice relevant to the specific industries (e.g. Tourism and Property)**
- This Act intends to establish a legislative framework for the promotion of black economic empowerment.
 - It also empowers the Minister of Trade and Industry to issue codes of good practice and to publish transformation charters.
- (f) **National Environment Management: Integrated Coastal Management Act (Act No. 24 of 2008)**
- This Act seeks to establish a system of integrated coastal and estuarine management in the Republic, including norms, standards and policies, in order to promote the conservation of the coastal environment, and maintain



the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable.

- It also defines rights and duties in relation to coastal areas and determine the responsibilities of organs of state in relation to such coastal areas.
- It also prohibits incineration, control dumping at sea, pollution in the coastal zone, inappropriate development of the coastal environment and other adverse effects on the coastal environment.
- It gives effect to South Africa's international obligations in relation to coastal matters.
- This Act is part of the plethora of NEMA subsidiary legislative tools to provide for co-operative environmental governance by establishing principles for decision-making on matters affecting the environment, institutions that will promote cooperative governance and procedures for coordinating environmental functions exercised by organs of state.
- It also provides for certain aspects of the administration and enforcement of other environmental management laws; and to provide for matters connected therewith.

(g) Municipal Systems Act, Act No.32 of 2000 and its Regulations

- This Act seeks to provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities and ensure universal access to essential services that are affordable to all.
- It defines the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures.
- It also provides the way municipal powers and functions are exercised and performed, provides for community participation, establishes a simple and enabling framework for the core processes of planning, performance management, resource mobilization and organizational change which underpin the notion of developmental local government.
- It further provides a framework for local public administration and human resource development.
- It also empowers the poor and ensure that municipalities put in place service tariffs and credit control policies that take their needs into account by providing a framework for the provision of services, service delivery agreements and municipal service districts.
- It provides for credit control and debt collection; to establish a framework for support,, monitoring and standard setting by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities in harmony with their local natural environment; to provide for legal matters pertaining to local government; and to provide for matters incidental



(h) Municipal Structures Act, 1998

- To provide for the establishment of municipalities in accordance with the requirements relating to categories and types of municipality; to establish criteria for determining the category of municipality to be established in an area; to define the types of municipality that may be established within each category; to provide for an appropriate division of functions and powers between categories of municipality; to regulate the internal systems, structures and office-bearers of municipalities; to provide for appropriate electoral systems;

(i) Codes of Good Practices and Transformation Charters

- In terms of Section 9 of the BBBEE Act (Act 53 of 2003), the Minister of Trade and Industry is empowered to promote the purpose of the Act by publishing these Codes of Good Practice which may include, amongst others,
 - further interpretation and definition of broad-based black economic empowerment and the interpretation and definition of different categories of black empowerment entities.
 - qualification criteria for preferential purposes for procurement and other economic activities
 - indicators to measure broad-based black economic empowerment.
 - the weighting to be attached to broad-based black economic empowerment indicators referred to the preceding paragraph herein above.
 - guidelines for stakeholders in the relevant sectors of the economy to draw up transformation charters for their sector:
- Section 10 of the BBBEE Act mandates every organ of state and public entity to consider and apply any relevant code of good practice issued in terms of this Act in
 - determining qualification criteria for the issuing of licenses, concessions, or other authorizations in terms of any law.
 - developing and implementing a preferential procurement policy.
 - determining qualification criteria for the sale of state-owned enterprises.
 - developing criteria for entering into partnerships with the private sector.
- In terms of Section 12 of the BBBEE Act, the Minister of Trade and Industry is required to publish and promote the transformation charter for a particular sector of the economy, if the Minister is satisfied that the charter:
 - has been developed by major stakeholders in that sector, and
 - advances the objectives of the BBBEE Act.

(j) The Competition Act, Act No 89 of 1998

- This Act intends to provide for the establishment of a Competition Commission responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position, and mergers; and for



the establishment of a Competition Tribunal responsible to adjudicate such matters, and for the establishment of a Competition Appeal Court; and for related matters

5. GENERAL PRINCIPLES UNDERLYING THE DOCUMENT

The following principles inform the document:

5.1 Redress of Historical exclusion and inequalities

- South Africa economy has a long and painful history of race and gender exclusions and inequalities inherent from its past from Apartheid and Colonialism.
- The majority of South African population, particularly the Black communities continue to be excluded from the productive resources and denied access to such economic levers.
- Unless further steps are taken to increase the effective participation of the majority of South Africans in the economy, the stability and prosperity of the economy in the future may be undermined to the detriment of all South Africans. irrespective of race

5.2 Unlocking Economic Value of the Identified Municipal Asset

- Municipal Immovable assets continues to realize less value than its realistic potential due to legal prohibition of conducting commercial activities (other than provided in the Constitution, National and Provincial legislation).

5.3 Promotion of Economic Reconstruction and Sustainable growth

- Aggressive promotion, advancing and granting access to broad-based and effective participation of black people in the economy and promote higher growth rate.
- Promotion of broad-based local economic development through an increased employment and more equitable income distribution.

6. SCOPE OF THE PROPOSED POLICY

6.1 This document is applicable to all Municipal Immovable Capital Assets and those of other spheres of government wherein the Municipality is legally acting as their Managing Agent and has been granted in writing such right to grant rights to use, control or manage them on their behalf, wherein the period of lease is ten (10) years or longer. In the case of a shorter period, it shall be read with the existing disposal and leasing policy of the Municipality.

6.2 These Capital Assets are categorized into three groups as follows:

6.2.1 Municipal owned non-exempted Capital Assets.



6.2.2 State land wherein ownership vest with National or Provincial government.

6.2.3 Special Capital Assets (either owned by the Municipality or Provincial or National Government) e.g. properties located in the Admiralty Reserve, Estuarine

7. PROPOSED FRAMEWORK IN RESPECT OF GRANTING OF RIGHT(S) TO USE, CONTROL OR MANAGE

7.1 The Broad Based Black Economic Empowerment Act, Act No. 53 of 2003 and various Codes of Good Practice or Sectoral Transformation Charters relevant to the specific industries (e.g. Tourism and Property) constitute the framework in which the Municipality wishes to consider granting rights to use, control or manage its Capital Assets only on those entities who qualify for the:

7.1.1 Direct empowerment

- a) Equity Ownership
- b) Management and Control

BBBEE Scorecard Elements	Indicator	Description
a) Equity Ownership	Voting Rights	Exercisable Voting Rights in the Entity in the hands of Black People / Black Women
	Economic Interest	Economic Interest in the Entity to which Black People / Black Women are entitled
		Economic Interest of Black natural people in the Measured Entity of any of the following: <ul style="list-style-type: none"> • Black designated groups • Black participants in Employee Share Ownership Programmes • Black People in broad base Ownership Schemes • Black participants in Cooperatives
	Realization Points	New Entrants
		Net Value measured in terms of formulae in the Codes having regard to the extent that the acquisition debt has been repaid
b) Management and Control	Board Participation	Exercisable voting rights of black / black female board members / black executive director / black female executive director as a percentage of all board members
	Executive / Non-Executive Management	Black / Black female Executive Management as a percentage of all executive directors

7.1.2 Human resources development

- a) Employment Equity
- b) Skills Development and Transfer

BBBEE Scorecard Elements	Indicator	Description
a) Employment Equity	Senior Management	Black employees / Black female employees in Senior Management as a percentage of all senior management
	Middle Management	Black employees / Black female employees in Middle Management as a percentage of all middle management

	Junior Management	Black employees / Black female employees in Junior Management as a percentage of all junior management
	Employees with Disabilities	Black employees with disabilities as a percentage of all employees
b) Skills Development and Transfer	Skills Development Expenditure on any programme specified in the Learning Programme Matrix for black people as a percentage of the Leivable Amount	Skills Development Expenditure on any programme specified in the Learning Programme Matrix for black people / black employees with disabilities as a percentage of the Leivable Amount
	Learnerships, Apprenticeships and Internships	Number of black people participating in Learnerships, Apprenticeships and Internships as a percentage of total employees
		Number of black unemployed people participating in training specified in the learning programme matrix as a percentage of number of employees

7.1.3 Indirect Empowerment

- a) Preferential Procurement
- b) Enterprise Development
- c) Socio-Economic Development
- d) Economic Development

BBBEE Scorecard Elements	Indicator	Description
a) Preferential Procurement	Preferential Procurement	BBBEE Procurement Spend from all Empowering Suppliers based on the BBBEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend
		BBBEE Procurement Spend from all Empowering Suppliers that are Qualifying Small Enterprises (QSE) / Exempted Micro-Enterprises (EME) / at least 51% black owned / at least 30% black women owned based on the applicable BBBEE Procurement Recognition' Levels as a percentage of the Total Measured Procurement Spend
b) Enterprise Development	Supplier Development	Annual value of all Supplier Development Contributions made by the Measured Entity as a percentage of the target
	Enterprise Development	Annual value of Enterprise Development Contributions and Sector Specific Programmes made by the Measured
c) Socio-Economic Development	Socio-Economic Development	Annual value of all Socio-Economic Development Contributions by the Measured Entity as a percentage of the target
d) Economic Development	Economic Development	Economic Development Investment in under-resourced areas as a percentage of total annual investment
		Contribution towards any Economic Development Programme as a percentage of total annual investment activities.



- 7.2 The turnover thresholds as published by the responsible national Department from time to time to define the following categories of enterprises will be used to determine the appropriate BBBEE scorecard to measure the transformative agenda:
- a) Exempted Micro-Enterprise – EME (inclusive of startup enterprises)
 - b) Qualifying Small Enterprises – QSE
 - c) Large Enterprises (LE)
- 7.3 The entities to be measured are required to have their BBBEE scorecard prepared and maintained by an accredited verification agent. An EME is only required to obtain a sworn affidavit or Companies and Intellectual Property Commission (CIPC) certificate on an annual basis confirming the total annual revenue of R5 million or less, and level of percentage of Black Ownership, which serves as a proof of B-BBEE compliance or certificate. Start-up entities must be measured as EMEs for the first year following the commencement of its operations and enjoy the same benefits.

8. PROPOSED PERIOD FOR GRANTING OF RIGHT TO USE, CONTROL OR MANAGE CAPITAL ASSETS

- 8.1 The desirable period for granting right to use, control or manage Municipal Capital Asset is between **five (5) years and up to thirty (30)**, depending on the circumstances and parties involved which may include but not limited to the value of the investment. Right of renewal may be negotiated or exercised at the sole discretion of Council. It be further noted that any lease which is ten-year or longer is registrable at the Deeds Office in the form of Notarial Deed of Lease. The cost of such registration shall be borne by the Lessee.
- 8.2 Any period longer that thirty years (30), including its renewable period not in excess of another thirty years, Council must consider permanent disposal of such a Capital Asset.
- 8.3 As from its date of operation (still to be determine by Council) till its renewal in five years, the applicable thresholds are as follow:

INVESTMENT VALUE	PERIOD	RENEWABLE
R0. Up to R14.9 million	1 – 59 months (5 years)	Same or less period
R15 million up to R50 million	60 – 119 months (9.5 years)	Same or less period
R51 million up to R100 million	120 – 180 months (15 years)	Same or less period
R101 million up to R300 million	181 – 240 months (20 years)	Same or less period
R301 million up to R500 million	241 – 300 months (25 years)	Same or less period



R501 million and above	301 – 360 months (30 years)	Same or less period
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- 8.4 Notwithstanding the investment value given herein above as a guideline, the Council at its own discretion, may consider and grant a longer lease period based on the merit of each proposition.
- 8.5 Save for Capital Assets vested and/or owned by other spheres of government (Provincial or National), the period of granting right to use, control or manage shall not exceed the period of validity of the Property Management Agreement entered and between the Municipality and such sphere of government.

9. PROPOSED PROCESS, PROCEDURES, CONSIDERATION AND PROVISIONS FOR GRANTING OF RIGHT TO USE, CONTROL OR MANAGE CAPITAL ASSETS

- 9.1 The regulated process, procedure, consideration, and provisions outlined in Chapter 4 of the Municipal Asset Transfer Regulations (August 2008) will govern in dealing with Municipal Capital Assets.
- 9.2 Chapter 2 of the Municipal Asset Transfer Regulations (August 2008) will govern in dealing with Municipal Capital Assets, wherein the provisions of Section 33 of the aforesaid Regulations are applicable.
- 9.3 Paragraph 9.1 and 9.2 herein above shall be read together with the Municipality's Policies on Management and Disposal of Properties, and Asset Management.
- 9.4 The regulated process, procedure, consideration, and provisions outlined in Government Immovable Asset Management Act (as may be amended from time to time) will govern in dealing with Capital Assets vested and/or owned by other spheres of government (Provincial or National) wherein the Municipality has entered into a valid and legally enforceable Property Management Agreement.

10. MANAGEMENT AND MAINTENANCE OF THE MUNICIPAL CAPITAL ASSET DURING THE LEASE PERIOD

- 10.1 All costs pertaining to a lease period of ten (10) years or longer, 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. In the case of leases shorter than ten years, the Municipality has approved a split of 50:50 on the costs of property valuation, while other costs remain the responsibility of the potential Lessee. Where necessary a deposit to cover the costs may be required.
- 10.2 No immovable property shall be sub-let, and no lease may be ceded or assigned without the prior approval of the municipality.
- 10.3 An owner of immovable property who leases adjoining municipal property, for the purposes of the core activities on the main property, may be substituted by his successor in title for the duration of the remainder of the lease term, if he or she



subsequently sells the property or the subject property is bequeathed, on condition that Council is made aware of the related status and subsequently approves thereof in the form of a Cession within three months of the change of status, failing which Council will have the right to cancel such lease and re-take possession of the property in question.

- 10.4 Rental except where it is decided otherwise by the municipality, shall escalate annually by a percentage fixed in accordance with the consumer price index averaged over the three months prior to commencement of the lease. The leases for a period shorter than ten years shall be subject to the existing policy provision of escalation of six to ten percent per annum.
- 10.5 The lessee shall as a rule be liable for the payment of rates and service charges in respect of the property. 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 the case of small unsurveyed areas of land used for gardening purposes, etc. no rates shall be levied.
- 10.6 The lessee shall be responsible for the cost of relocation or installation of services where required and for the securing of servitudes.
- 10.7 The lessee shall indemnify the municipality against any possible claims arising from the lease or use of the immovable property.
- 10.8 Where land is leased for development, a condition shall be included in the lease agreement stipulating that such development shall be completed within three years (unless expressly extended by Council resolution) 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.
- 10.9 Save with prior approval the property may only be used for the purpose for which it was let.
- 10.10 Officials from the municipality shall at all reasonable times be entitled to enter and inspect the immovable property.
- 10.11 The lessee shall be responsible for maintaining the leased property including adequate insurance against its replacement value.
- 10.12 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 (without structural damages to the asset) 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.

11. PROPOSED PROCESS MAPPING FOR GRANTING OF RIGHT TO USE, CONTROL OR MANAGE CAPITAL ASSETS

**Council Resolution 1
(Determination)**

- Decides on reasonable ground that the identified land is **NOT** needed for Minimum Basic Municipal Services.
- Considers the fair value of the land and Economic and Social Community Value to be received.
- Determine whether Public participation or not.
- Information Statement summarizing the Proposals/ Concept (S5(3)(b) of the Municipal Asset Transfer Regulations).
 - Authorize Accounting Officer its powers to decide that the land (immovable asset) is not needed for Municipal Basic Services as well as the movable assets
 - Application of five SCM principles

**Council Resolution 2
(Consideration)**

- Council may consider and approve taking into account the Section 7(a to l) of the Municipal Asset Transfer Regulations.
- Impact of the Proposal/Concept on its total Asset Value
- Approval of the Concept / Proposal in its entirety wherein roles and responsibilities are clearly defined.

In the case of new unencumbered municipal asset – preferably option

UNSOLICITED BID PROCESS MAPPING	
FOR CONSIDERATION OF UNIQUE AND INNOVATIVE CONCEPTS/PROPOSAL WITH EXCEPTIONAL BENEFIT AND COST ADVANTAGES TO THE MUNICIPALITY OFFERED BY THE SOLE SERVICE PROVIDER	
LEGISLATIVE FRAMEWORK	
<ul style="list-style-type: none"> Section 113 of the MFMA Regulation 37 of the MSCM Regulations Municipal SCM Policy 	
PROCESS AND PROCEDURE	ANTICIPATED TIMELINE
1. Consideration of the Unsolicited Bid - Determination of compliance with reasonable ground for unsolicited bid (Not more than 120 days)	
1.1 Demonstrably or proven uniqueness and innovative nature of the product or service offered	30 to 90 days
1.2 Exceptional beneficial and cost advantages to the Municipality	
1.3 Product or Service offered – Sole Provider	
1.4 Sound reasons by the Accounting Officer not to go through normal competitive process	30 days from determination of 1.1 to 1.3
2. Consideration of the Unsolicited Bid - Council Approval and Public participation (Not more than 95 days)	
2.1 Council must be requested to authorize the public participation process (form and extent):	30 days from determination of 1.4
2.1.1 Public advertisement on local newspaper and Municipal website.	Within 14 days from Council resolving on the matter
2.1.2 Invitation of members of the Public or other interested parties to submit their comments or representation in respect of the proposal within 30 days.	
2.1.3 Request for the views and recommendations of the National, Provincial Treasuries and National and Provincial COGTA, and Public Work. The respective Departments shall be given	Within 7 days from closing date of 2.1.2

<p style="text-align: center;">14 days to respond in writing</p> <p>1.1 Information Statement summarising: 1.1.1 items in paragraph 1 herein above 1.1.2 Value of the immovable capital asset</p>	<p style="text-align: center;">Be an attachment of Council item/report mentioned in 2.1</p>
<p style="text-align: center;">3. Evaluation and Adjudication of the Unsolicited Bid – Bid Adjudication Committee (BAC) Minimum of 21 days to maximum of 58 days</p>	
<p>3.1 Consideration of the Unsolicited Bid in a meeting open to public</p> <p>3.2 Comments and representations by members of the public or interested parties must be considered by the BAC</p> <p>3.3 written views, comments and recommendations by National and Provincial Treasuries, National and Provincial COGTA and Public Works must also be considered by the BAC.</p> <p>3.4 BAC may award, reject or recommend to the Accounting Officer, depending on its level of delegation.</p> <p>3.5 If, written views, comments and recommendations by National and Provincial Treasuries, National and Provincial COGTA and Public Works are rejected, the Accounting Officer must within seven (7) days of such determination, submit to the National and Provincial Treasuries and Auditor General’s Office the reasons for such rejection.</p> <p>3.6 No Contract committing the Municipality / Municipal entity may be entered into or signed within 30 days of the submission.</p>	<p>Advertise 14 days prior to the date of the BAC meeting to consider the unsolicited bid and invite</p> <p>7 days after its meeting (when it confirmed its minutes)</p> <p>7 days after the confirmation of the BAC’s resolution</p> <p>30 days from the date of compliance with 3.5 (if applicable)</p>