

A22/2011

REPORT ON DRAFT POLICY ON THE ALIENATION OF IMMOVABLE ASSETS FOR MATJHABENG MUNICIPALITY (SMTP & HS) (8/1/B)

PURPOSE

To present before Council, the draft Policy on the Alienation of Immovable Assets as per resolution underneath.

BACKGROUND

Council on 19 January 2011 resolved that the draft policy be circulated for public participation for a period of thirty days and that it be resubmitted to Council for final approval.

The draft policy was advertised in the press for a period of thirty days and no comments/inputs were received.

The Mayoral Committee at its meeting held on 15 April 2011 resolved that the draft policy **BE ADOPTED** as a regulating document for the alienation of all immovable assets within the municipality after inclusion of the following:

A clause to allow potential foreign purchasers long term lease agreements or partnership with a South African resident as a mayor stakeholder.

*** A copy of the draft Policy on Disposal of Immovable Assets is attached on page 10 to page 35 of the Annexures.

FINANCIAL IMPLICATIONS

Once the policy is adopted the process of alienation of immovable assets will be enhanced and Council will derive income due to sale transactions as well as rates and taxes after ownership has been transferred.

LEGAL IMPLICATIONS

None at this stage.

POLICY POSITION

Municipal Finance Management Act (MFMA) of 2003
Municipal Systems Act 2000
Matjhabeng Supply Chain and Management Policy

RECOMMENDATIONS

1. That Council adopts the draft Policy on the Alienation of Immovable Assets as a regulating document for the alienation of all immovable assets within the municipality.
2. That the alienation of land to foreign companies preferably be in partnership with a South African company.

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PURPOSE

To present before Council, the draft Policy on the Alienation of Immovable Assets as per resolution underneath.

DISCUSSIONS

The Executive Mayor presented the item to Council.

COUNCIL RESOLVED (21 APRIL 2011)

1. That Council **ADOPTS** the draft Policy on the Alienation of Immovable Assets as a regulating document for the alienation of all immovable assets within the municipality.
2. That the alienation of land to foreign companies **PREFERABLY BE** in partnership with a South African company.
3. That the Municipal Manager **MUST**, in terms of Sections 14, 90 and 110 of the Municipal Finance Management Act, **SUBMIT** a list of pieces of land earmarked for alienation, to Council every 6 months.

POLICY ON DISPOSAL OF IMMOVABLE ASSETS
MATJHABENG LOCAL MUNICIPALITY



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DEFINITIONS:

"Alienate" in relation to a sale of land means sell, exchange or donate, irrespective of whether such sale, exchange or donation is subject to a resolutive or suspensive condition;

"Immovable Asset" means:

- [i] immovable property and real rights registered in the name of the Municipality;
- [ii] immovable property and real rights the Municipality is entitled to have registered in its name; and
- [iii] any other immovable property which, by law, vests in the Municipality.

BBBEE" Broad Based Black Economic Empowerment in accordance with the Broad Based Black Economic Empowerment Act (Act No 53 of 2003) means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to:

- (a) Increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- (c) human resource and skills development;
- (d) preferential procurement; and
- (e) investment in enterprises that are owned or managed by black people;

"Constitution" means the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996);

"Contract" means a deed of alienation under which land is sold against payment by the Purchaser to, or to any person on behalf of the seller an amount of money in more than two instalments over a period exceeding one year;

"Council" means a municipal council referred to in section 157 of the Constitution;

"Integrated Development Plan (IDP)" means the Integrated Development Plan of the Municipality as envisaged in section 25 of the Municipal Systems Act (Act No. 32 of 2000);

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

"Market value", in relation to a property, means the amount a property would have realized if sold on the date of valuation in the open market by a willing seller to a willing buyer;

"Municipality" means the Matjhabeng Local Municipality;

"Municipal Manager", means the Municipal Manager of the Municipality;

"Municipal Valuer" means a person designated as a municipal valuer in terms of section 33 (1) of the of the Municipal Property Rates Act no 6 of 2004;

"Previously Disadvantaged Individuals (PDI)" means persons who were previously disadvantaged by unfair discrimination and who, in terms of section 9(2) of the Constitution, may be protected and advanced to achieve equality and, for the purposes of this policy, includes the following designated groups:

- (a) Men of African, Asian or coloured descent;
- (b) women, irrespective of descent; and
- (c) disabled persons, irrespective of descent;

"Property" means-

- (a) immovable property in the name of Matjhabeng Local Municipality, including, in the case of a Sectional title scheme, a sectional title unit registered in the name of a municipality;
- (b) public service infrastructure;

"Viable Property" means Property that can be developed and function as a separate entity capable of registration by the Registrar of Deeds;

"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;

"Social benefit" is defined as services provided by registered welfare, charitable, non- profit and Religious organisations.

"Public-Private Partnership" means a Public-Private Partnership as defined in the Municipal Public-Private Partnership Regulations

"Spatial Development Framework (SDF)" means the SDF of the Municipality.

"Supply Chain Management Policy" means the Supply Chain Management Policy of the Municipality;

"MFMA" means the Municipal Finance Management Act, (Act No. 56 of 2003);

"Systems Act" means the Local Government: Municipal Systems Act, 32 of 2000

2. PREAMBLE

2.1 The purpose of this (draft) Policy document is to:

- a) Provide a policy framework for the management of Council's land and other immovable property; in accordance with the Municipality's Supply Chain Management Policy as amended in the Supply Chain Management Policy scorecard.
- b) Establish policy prescriptions to regulate the use, disposal and acquisition for various categories of immovable property; and
- c) Provide provisions for regulating and coordinating transactions to facilitate the establishment of appropriate private/public partnership to develop properties.
- d) To reflect the methodology and procedure for the sale and letting of various types of properties, and at the same time make economic opportunities available to investors that will result in the economic growth and development in the local economy.

2.2 In the exercise of its powers, duties and functions, Council has the right to acquire, hold, benefit and alienate land and other immovable property.

2.3. Council is the custodian of the Municipality's land and immovable property and is responsible for the administration thereof.

2.4. A key objective of Council is to ensure that immovable property 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 Council and the Community.

3. INTRODUCTION

3.1 Council is the owner of the largest number of properties in the Matjhabeng area. In the exercise of its powers, duties and functions Council has the right to acquire, hold, enhance, lease and alienate immovable property. The inequitable spread of ownership of property through out the Matjhabeng area and the historical causes thereof are recognised, and Council acknowledges that it has a leading role to play in addressing these imbalances by ensuring that the immovable assets under its control are dealt with in a manner that ensures the greatest possible benefit to the strategic objectives of, the municipality and the community that it serves.

3.2 The objective of this policy is to provide a framework for the disposal or transfer of immovable assets or rights thereof and the management and use of Council's immovable property in the event that the property is not subject to disposal, in a manner that would support the strategic objectives of the municipality contained in its Integrated Development Plan , the Spatial Development Framework and the needs and aspirations of the community that it serves.

4. POWERS

4.1 NECESSITY FOR A COMPREHENSIVE LAND DISPOSAL POLICY

4.1.1 Sections 14 read with section 90 of the Local Government: Municipal Finance Management Act No 56 of 2003 ("the MFMA") prescribes that:

"the Municipality may not dispose of any of its capital assets needed to provide a minimum level of basic municipal services, unless in a meeting open to the public, has decided on reasonable grounds that the asset is not needed to provide such a minimum level of basic municipal services. The fair market value of the asset and the economic and community value to be received in exchange for the asset must be considered. The transfer of ownership must be fair, equitable, transparent, competitive, and consistent with the Municipality Supply Chain Management Policy".

4.1.2 Apparent from above provisions is that:

4.1.3 Council must reserve and manage immovable property in its own ownership for municipal purposes aligned with its strategic objectives and to use, enhance and improve such immovable property enclosed and cultivated.

4.1.4 Council must reserve and manage immovable property in its ownership for its purposes and operation needs.

4.1.5 The Council may acquire immovable property and rights in property by way of private treaty, cession, donation and expropriation to support its strategic objectives.

4.1.6 Council may alienate immovable property and rights in property in its ownership by way of a direct sale, public tender, auction and donation.

4.1.7 Council may let immovable property in its ownership on a long term or short term basis by way of direct negotiation or public tender.

- 4.2 Council may only alienate immovable property or rights in immovable property once it is satisfied that such property or right is not required to provide the minimum level of basic municipal services and once it has considered the fair market value thereof as well as the economic and community value to be received pursuant to such disposal.
- 4.3 Before alienating immovable property or rights in property, Council must 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 rights is retained by Council.
- 4.4 All processes for the disposal of immovable property must be considered in accordance with this policy framework as set out below.
- 4.5 In addition to the above, any disposal should take into account that the municipality has a core responsibility to acquire and avail land and buildings, in the first instance, for its own use for purposes of developing and maintaining municipal infrastructure, promoting service delivery and for facilitating social and economic development and spatial integration. Land assets unrelated to these responsibilities are, by implication, surplus to the municipality's requirements although future requirements must be acknowledged and hence the need to hold immovable property in reserves.
- 4.6 Thus, the surplus immovable property may be dealt with by the municipality in a manner that it deems fit, which is either to lease it out or dispose of it completely all transactions that the municipality enters into, there should be maximum benefit to the municipality, its operational requirements and the broader community.

5. LEGISLATIVE FRAMEWORK

There are various legislative framework regulating the management and use of land, including but not limited to the following:

- ☐ Alienation of Land Act (Act No. 68 of 1981)
- ☐ Broad Based Black Economic Empowerment Act (Act No. 53 of 2003);
- ☐ Development Facilitation Act (Act No. 67 of 1995);
- ☐ Extension of Security of Tenure Act (Act No. 62 of 1997).
- ☐ Land Use Management Bill;
- ☐ Local Government: Municipal Finance Management Act (Act No. 56 of 2003);
- ☐ Municipal Supply Chain Management Policy Regulations (Act No. 27636);
- ☐ Property Rates Act (Act No. 6 of 2004);
- ☐ The Constitution of the Republic of South Africa (Act. No. 108 of 1996);

6. POLICY PRINCIPLES

In terms of the Land Disposal Policy for Matjhabeng:

- a) Council may alienate land or rights on land by means of direct sale, public tender, auction or donation once it is satisfied that such property or right is not required to provide the minimum level of basic Municipal service.
- b) Special measures be introduced to assist PDI's to acquire land.
- c) The acquisition, sale, auction or donation of land shall be in accordance with the Municipality's Supply Management Policy and the Supply Chain Management Scorecard.
- d) Special measures be introduced in support of economic development initiatives on a macro scale, including tourism initiatives.
- e) That measures be introduced to achieve equity within the Broad Based Black Economic Empowerment Act (53 of 2003).
- f) The alienation or lease of property or rights in property shall be subject to the transaction being advertised in the press for objections in the Municipality's official languages.
- g) Council may acquire, use, benefit, alienate, let or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the municipality, unless it is precluded from so doing by law or the conditions under which such immovable property was acquired by the municipality.
- h) Utilization of Council immovable property will be guided by the Integrated Development Plan (IDP) and the Spatial Development Framework (SDF) and the Land Use Management Plan.
- i) Unless otherwise expressly provided for in any other law and whereas, various legislation provide for the disposal of land at market related prices, land can only be disposed of at less than the market related value, subject to approval by Council in which case Council must consider whether:
 - (a) The immovable asset is surplus;
 - (b) Current market value (details of how arrived at) and the community value to be received in exchange for the disposal;
- j)

- (c) Comparison of disposal methods;
 - (d) Examination of costs and benefits of each disposal method, and
 - (e) If disposal is envisaged by way of an offer to purchase, all documentation (including minutes on meeting/s held) pertaining to said offer must be submitted to Council prior to conclusion of such an offer.
- k) The Municipal Manager must draw a comparison between the various methods of disposal (including consideration of the costs and benefits attached to each method) and justify the decision of the disposal method chosen.
- l) The proceeds derived from the disposal of immovable property must be used as a funding mechanism for funding of capital projects.
- m) Immoveable property will be sold/let at market value except in circumstances where Council decides
- n) otherwise. Reference should be made to the provisions on selling/letting on the Housing Act, Act 107 of 1997.
- o) All applications to acquire, sell/let of city property must be considered in accordance with this policy framework, current legislation and relevant supply chain management policies.
- p) In assessing tenders, Council must take cognizance of the total cash and developmental value of the packages offered by the renderers where such packages are permissible in terms of the conditions of tender. In cases where the actual amounts tendered are roughly similar but a particular tenderer, for example, also offers to make improvements to the property or add significant value, the cash and developmental value and the social and economic spin-offs of such improvements and the total development must also be taken into consideration when the highest tender is determined.
- q) Where immovable property is alienated or let for some or other development project, including a business project, but the specific type of development which Council is prepared to allow is of cardinal importance, the Council is at liberty to call for development proposals, including a monetary offer. In such a case the price offered for the immovable property by the developer will only be part of the total package. Should Council consider it desirable not to accept the highest tender or decide to accept a particular development proposal or package transaction in which the amount tendered is not the highest offer, the reasons for this decision must be fully set out and recorded in the minutes of the Council meeting in question.

- r) The municipality may elect to link the sale or development of land within a single transaction to the development of municipal infrastructure or any other public infrastructure. In circumstances where land is included in a joint transaction, the transfer of land will be exempt from procurement processes if the general transaction has been concluded in terms of the Councils Supply Chain Management Policy and is compliant to the guidelines prescribed in the MFMA.
- s) The Municipality's designated valuer shall determine rentals unless circumstances warrant the use of an independent valuer.
- t) Council's immovable property must be inspected at reasonable time periods, but at least once every two (2) years, to ensure compliance with the terms and conditions of the agreement of sale or lease.
- u) The letting of sports ground facilities, etc to the Sports Boards, Sports Federations and other similar bodies and affiliated sports clubs shall be let in accordance with the Municipality's policy applicable to sports and recreation.
- v) Closed streets, lanes and public open spaces may be sold/let to adjoining owners, provided that written notice has been served on all adjoining owners.
- w) The selling price or lease tariff for the out-of-hand sale and lease of closed streets, lanes and public open spaces to adjoining owners shall be determined as follows by the Municipality's designated valuer:
 - (a) Streets, lanes and public open spaces which will enhance the value of the immovable property of the adjoining owner shall be sold or let at market value;
 - (b) Streets, lanes and public open spaces which will not enhance the value of the property of the adjacent owner shall be sold or let at 30% of market value, and
 - (c) Streets, lanes and public open spaces leased/sold to organizations not for gain or to adjacent owners and which land is regarded as a burden to Council shall be sold/let at an annual tariff or sale price calculated at 20% of the market value.
- x) Restrictive title conditions may only be cancelled in cases where the conditions in question which are in favour of Council are registered, and where the parties affected are only the Council and the property owner concerned and on condition that Council satisfies itself that no other person will be prejudiced.
- y) Public Auction to dispose of land will be used as a last resort.

- z) That special measure be introduced regarding the allocation of sites pertaining to different residential categories.

7. CATEGORIES OF MUNICIPAL PROPERTIES

7.1 The municipality's immovable assets are categorised as follows:

- 7.1.1 Residential land;
- 7.1.2 Commercial and industrial land;
- 7.1.3 Social sites (such as place of worship, Creches and other institutions); and
- 7.1.4 Sports sites and recreational sites.

7.2 As stated above, only those properties which are not required to provide basic municipal services are the subject matter of this policy. In the event however that the properties are reserves, the lease provisions will apply.

7.3 For the purpose of this policy, **viable** immovable property is deemed to be property that can be developed and function as a separate entity and can be registered as a separate entirely by the Registrar of Deeds and **non – viable** immovable property is 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.

7.4 Unless otherwise provided for in this policy, the alienation of viable immovable property shall be effected by means of a process of a competitive bidding process.

7.5 Immoveable property may be alienated to social care users. Unless otherwise directed by Council, the purchase price payable shall be a discounted price subject to any conditions that the Council may wish to register against the title deed of the property, including reversionary provisions.

8. PRICING

8.1 Unless otherwise provided in this policy, vacant or improved immovable property and rights in immovable property shall be alienated at a fair market related value as determined by the average market price of two (2) sworn Valuers).

8.2 Immoveable capital assets, must be sold at market related prices, unless public interest or the plight of the poor demands otherwise.

8.3 Immovable capital assets that are leased, must be leased at market related rates, unless public interest or the plight of the poor demands otherwise.

8.4 In the event that immovable capital assets are traded – in for other immovable capital assets, the highest possible trade – in price must be negotiated.

8.5 All fees, charges, rates, tariffs, scales of fees or other charges relating to the leasing of property must be paid regularly and reviewed annually.

9. MANNER OF DISPOSAL OF THE MUNICIPAL'S VARIOUS CATEGORIES OF ASSETS

9.1 Definition of the Process

(All marked related values to be determined between the average marked related values of to sworn valuers.)

9.1.1 The disposal must seek to achieve objectives of the municipality read with the Supply Chain Management Policy. The following methods can be employed:

9.1.1.1 The outright tender method which involves the call for purely financial offers for the immovable property offered for alienation. In adjudicating such tenders the highest financial offer will score a determined number of points with lower offers scoring proportionately in relation to the highest offer. In addition, points must be allocated for complying with the municipality's Black Economic Empowerment Policy.

9.1.1.2 The main objective of the outright tender method is the promotion of first time home ownership in previously disadvantaged communities. Black persons who had never before owned immovable property, either directly or indirectly, but are financially able and otherwise qualified will be afforded preference in the adjudication of the tenders. This will apply solely to the disposal of single residential erven in areas and on sites considered suitable to meet this objective.

9.1.1.3 Competitive bidding, defined in the Supply Chain Management Regulations.

9.1.1.4 Unsolicited bid, especially for socio economic reasons where the plight of poor justifies it and for purposes of social housing.

9.1.1.5 Private treaty applicable between organs of state.

9.2 Process for Residential Assets.

9.2.1 Residential land incapable of development on its own (non – viable residential land):

9.2.1.1 Will be offered as first preference to the respective adjoining owner.

9.2.1.2 Will be priced at market value. The purchaser will be responsible for any costs associated with the possible relocation of services, rezoning, survey, registration and transfer.

9.2.2 Residential land capable of developments on its own (viable residential land):

9.2.2.1 Will be subject to an upset price that is market related determined from an average marked related between two sworn valuers.

9.2.2.2 Will, within certain pricing cohorts as determined by the Council from time to time, be allocated to take into account persons who might have been previously disadvantaged.

9.2.2.3 The creation of a free- standing (new –spaces-development) lot will in each instance be preference of the Council in order that the new residential opportunities be created.

9.2.3 Residential land not immediately required by the Municipality's needs:

9.2.3.1 These are typically land parcels that have been acquired for a capital project, which has yet to commence.

9.2.3.2 In such instances:

9.2.3.2.1 the property will be offered on a short-term lease basis, as per lease agreement.

9.2.3.2.2 the rental will be at a market rate, unless otherwise determined by Council.

9.3 Process for Commercial Property.

9.3.1 Commercial and Industrial land incapable of development on its own:

9.3.1.1 will be offered in ownership of the respective adjoining owner.

9.3.1.2 will be priced at market value

9.3.1.3 the purchaser will be responsible for all costs associated with the possible relocation of services, rezoning, survey, registration and transfer.

9.3.2 Commercial and Industrial land capable of development on its own.

9.3.2.1 Ownership will be offered by competitive bidding process.

9.3.2.2 The transaction will be subject to an upset price that is market related.

9.3.2.3 Might be subject to conditions in support of certain objectives or programmes of the Council.

9.3.2.4 Commercial or Industrial land might be allocated within an area of specific focus or subject to a specific development or social programme.

9.3.2.5 the maximum return will not necessarily be the determining factor.

9.3.2.6 the objectives of Council will be clearly articulated through a competitive bidding process.

9.3.2.7 will be subject to development conditions to ensure that Council's aims are achieved.

9.3.2.8 may be offered in leasehold title to achieve certain objectives or to overcome specific constraints, as may be the situation from a site and/or time specific point of view.

9.3.3 Commercial and Industrial Property not immediately required for the municipality's needs.

9.3.3.1 These are typically land parcels that have been acquired for a capital project, which is yet to commence.

9.3.3.2 The property will be offered on a short or long term lease basis, and the period will vary based on when the property will be required.

9.3.3.3 The rental will be market rate, unless determined otherwise by the Council.

9.3.3.4 Ownership of the property will be offered by means of private treaty in the event that there is no demand for the site, or where it can be used by the adjoining property owner.

9.3.3.5 Municipal farms will be leased out to prospective applicants, for periods applicable from time to time.

9.3.3.6 Conditions will be determined by the particular use of a portion of farm land, and will be stipulated correctly at the time of alienation.

9.4 Social Sites

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

9.4.1.1 Place of worship to the degree and for that portion of a facility being used for spiritual gathering by, and social/pastoral/manse/welfare caring and support to worshippers and the broader community as set herein under:

(a) That the current method of application whereby the church submits an application to Council for a Church site, be continued.

(b) That the current Qualification Criteria as mentioned below be used:

- Name of the Church
- The Rev/Pastor must submit his/her Credentials
- The church must have a Constitution/ Code of Conduct of the Church
- Minimum membership of full grown members, children and youth must be +_ 200.
- Other branches of the same church within Matjhabeng must be provided by the applicant.
- Address where the church is operating and from when must be indicated in the application.

(c) That if the site is not zoned for church purposes, the site should be sold at market value.

(d) That the purchase price on church sites should be 50% of the purchase price (market value of the property) and that the money be paid in cash on signing the Deed of Sale.

(e) That the church building be constructed on site within 3 years with additional non renewable 2 years extension depending on improvements being done at end of 3 years

(f) That no residential unit (parsonage) shall be permitted on the site.

(g) That the Church building should comply with the National Building and Health Regulations.

(h) That the electrical installation of the building must comply to the Occupational Health and Safety Act and to the SANS 10142-2 regulations as obtainable from the Electrical Department of the Municipality.

(i) That the cost estimate for the provision and installation of the Electrical Connection to the stand must be obtained from the service provider in the area (Eskom or the Matjhabeng Municipality)

(j) That churches take Transfer of their property within 120 days from date of signing the Deed of Sale.

(k) That churches wishing to lease be allowed to sign a lease agreement with the Municipality for periods not exceeding 3 years at a nominal rental fee stipulated by Valuer, and thereafter be offered the first option to buy that erf.

(l) That the option of installment sale agreement to churches shall require the Purchaser to pay the purchase price together with interest thereon (to be calculated at a market

related rate) in monthly installments payment over a period of not less than 4 yrs. In addition the purchaser may not, subject to the provisions of the Alienation of Land Act, 1981 (Act No. 68 of 1981) take transfer of the property, until the purchase price has been paid ("installment sale agreement")

(m) That Council considers, with condition that one communal tap per leased/ allocated erf be provided by municipality and an applicant be requested to provide own portable toilet as means of temporary sanitation, when allocating / leasing unserviced land.

(n) That the lessee shall not without the permission of the municipality tamper with Municipal Infrastructure as a means of illegally connecting internal services in the erf.

(o) That church services in a tent be allowed for periods not exceeding 3 weeks and at a nominal rental fee not exceeding R200.00 per 3 week – session.

9.4.1.2 Child care facility insofar as it contributes to the function of multi-use childcare facility and is operated on a non-profit basis;

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

9.4.1.4 Schools or centers – utilized as homes for the handicapped and disabled persons;

9.4.1.5 Non-profit rehabilitation centers; rehabilitation centers;

9.4.1.6 Home/ centers for indigent, battered or destitute persons;

9.4.1.7 Organisations for the homeless and elderly;

9.4.1.8 Youth activity centers;

9.4.1.9 Facilities for accommodation, care and burial of animals; and

9.4.1.10 Cemeteries, non-profit funeral parlours and non-profit crematoria.

9.4.2 Immovable property may be alienated or let out or hand over to social care users exceptional cases where the Council is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community and the Council, where none of the conditions as set out in this policy provides for such exception and where they are not in conflict with provision of the policy.

9.4.3 Council reserves the right to entertain unsolicited bids for the purchase or lease of viable immovable property for social care uses subject to Council's strategic objectives.

9.4.4 Ownership will be offered by means of a competitive bidding without limiting the municipality's power to consider an unsolicited bid.

9.4.5 Bidders will be subject to screening process that will take into account the needs of the community, nature of the organization and ability to discharge intention, and the following factors shall be considered relevant in the selection and allocation of immovable property to places of worship.

9.4.5.1 the size of congregation/membership;

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

9.4.5.3 whether or not such a denomination is already represented in the area

- 9.4.5.4 whether or not welfare type facilities and activities will be in addition to religious activities.
- 9.4.5.5 whether or not the congregation/membership is drawn from the area in which a site is being applied for;
- 9.4.5.6 will be subject to a predetermined price that is market related, a discounted price subject to a reversionary provisions;
- 9.4.5.7 will be subject to development clause to ensure discharge of intention.

9.5 Principles applicable to the policy

- 9.5.1 The following principles shall be applicable in respect of each of the categories mentioned above:
 - 9.5.1.1 Black people who are South African citizens will be afforded a preference in respect of alienation of viable immovable property. Natural persons and legal entities that have benefited by means of preferential scoring may not dispose of such property by way of a nomination purchaser or within [five years] of (transfer) acquiring it.
 - 9.5.1.2 In order to achieve the objective of broad based economic empowerment, Council reserves the right to limit the number of acquisitions per tenderer or bidder in the course of a tender.
 - 9.5.1.3 Council reserves a right to entertain unsolicited bids for the purchase of viable immovable property for development purposes, with the proviso that it abides by Council's strategic objectives and more specifically that it favours the promotion of black ownership, entrepreneurship and community upliftment. A minimum percentage of black ownership shall be required in unsolicited bids with such percentage being determined by Council in terms of its policy on Supply Chain Management.
- 9.5.2 Non – viable streets, lanes, public open spaces and non – viable surplus immovable property may be sold out- of- hand to adjoining owners. Unless otherwise provided herein, such immovable property shall be sold at a fair market related value, to be advertised.
- 9.5.3 Immovable property may be alienated out- of- hand to other spheres of government, local authorities or municipal entities.
- 9.5.4 Viable immovable property may be sold out-of-hand in exceptional cases where the Council is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community and the Council, where none of the conditions as set out in this policy provides for such exception and where such action is not in conflict with any provision of the policy, to be advertised.
- 9.5.5 Council may grant occupation of its immovable property prior to the transfer thereof on condition that a suitable sale contract has been entered into, that the purchase price is paid in full or alternatively that an acceptable financial guarantee is provided to secure the purchase price, that occupational interest is payable at a rate specified by Council and

further that the Council is indemnified against any and all claims that may arise out of the occupation of the immovable property by the purchaser.

- 9.5.6 Viable immovable property purchased from Council by a first time homeowner (BNG) shall not, without Council's written consent, be resold within a period of **[5 years]** of the date of transfer.
- 9.5.7 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 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 endeavours to accommodate the wishes of the Land Claims Commission and undertakes to minimise land acquisition costs, subject to the provisions of the Municipal Finance Management Act, in the spirit of giving effect to the provisions of the Constitution of the Republic of South Africa.
- 9.5.8 Where viable immovable property is offered for sale by a competition bidding process, any immovable property which remains unsold in such a project may be sold out- of hand by Council at the upset price or higher, as long as it is satisfied that the 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 **[six months]**.
- 9.5.9 In considering claims for acquisitive prescription, the requirement of the provision of a satisfactory written proof shall be satisfied by the submission by the claimant of two legally attested affidavits stating that the claimant or predecessors in title have openly possessed the immovable property for an uninterrupted period of thirty years prior to the expiration of period of ten years contemplated by Section 1 of the Prescription Act No 16 of 1964.

10. TRANSPARENCY AND PRUDENT CONTROL

- 10.1 The claimed empowerment benefit are applied entirely at the discretion of the municipality and the municipality retains the right to approve or reject any claim.
- 10.2 As a local authority, it is important that all land transactions of the municipality involving real rights are conducted in a transparent manner with a high degree of prudence and control.
- 10.3 All transactions initiated by the public involving real rights to property, will be advertised in the media.

10.4 Where property is offered by the municipality to the market the following principles will apply:

10.4.1 Land use and bulk service contributions will be finalised by the municipality;

10.4.2 The offer to lease or purchase will be advertised in the media;

10.4.3 The proposal call or bid document will be made available both electronically and in hard copy for a fee **[Please review and amend according to Municipality's policy];**

10.4.4 The proposal call or bid will be either on a sealed bid basis or by dynamic pricing auction;

10.4.5 In the event that the property has a limited number of interested parties or where the property has been designated for a specific use, a selected bid may be called for.

11. APPLICANTS

Policy in this regard refers to the following aspects:

- Who may apply
- Application procedures
- What information and documents are required from applicants
- Additional information/documentation required
- Tender formats
- Power of attorney
- Pro forma documents

11. PROCEDURE

11.1. WHO MAY APPLY

Any prospective developer/home builder etc or his/her authorized agent may apply to Council through the office of the Executive Director: Economic Development & Planning.

11.2. HOW TO APPLY

11.2.1. An application letter in the form of a motivating memorandum, setting out the benefits to both Council and the Community through job opportunities, development statistics, social and economic development, etc. must be signed and submitted to Council.

11.2.2. Council may require additional information and such information shall accompany the application (refer to paragraph 2.1 above).

11.3. WHAT DOCUMENTS ARE REQUIRED

Copies of the following documents, of which one should be the original, all stapled together in the upper left-hand corner, must be submitted to the Executive Director: Economic Development & Planning.

In the event of Council receiving applications for the same property by two or more interested parties the procedure as set out in Clause 5 of this manual will be enforced.

11.3.1. Covering letter (2)

This letter must be addressed to the Executive Director: Economic Development & Planning.

11.3.2. Application form (2)

The attached application form must be completed in full and signed by the applicant. (Annexure 1)

11.3.3. Power of attorney (1)

If any person other than the prospective purchaser of the erf submits the application, the applicant must submit a power of attorney from the prospective purchaser of the erf. (Annexure 2)

11.3.4. Company/close corporation/trust resolution (1)

If the registered owner is a company, close corporation or a trust, the applicant must submit a resolution of the company, close corporation or trust stating the grounds on which the applicant is authorized to act on behalf of the company, close corporation or trust.

11.3.5. Proof of members of company/close corporation (1)

A copy of the following must be attached as proof:

- CM 29 form in the case of a company
- CK 1 or 2 form in the case of a close corporation
- Letter of appointment of trustees in the case of a trust

11.3.6. Proof of marital status of the owner (1)

Proof of Marital status must be provided. If the owner is married in community of property, his or her spouse must co-sign the power of attorney/application form.

11.3.7. Motivating Memorandum (1)

Only necessary if additional information is required in certain cases a company profile will be required.

11.4. ADDITIONAL INFORMATION/DOCUMENTATION

11.4.1 Council may require additional information and such information shall accompany the application (refer to paragraph 2.1 above).

11.4.2 Matjhabeng Local Municipality may in its discretion, give further notice of the application in terms of Clause 5 hereof by following the tender procedure as prescribed in terms of the MFMA above –

- Matjhabeng Local Municipality may require other documents, such as site plans and traffic impact studies, to be submitted in support of the application before the application is finalized.
- Where you, as the applicant, refer the application to "outside organizations" on your own, but with the consent of Matjhabeng Local Municipality, you must submit proof of the referral in the form of an acknowledgement of receipt that has a date on it to the office of the Executive Directive: Economic Development & Planning.

12. PROCESSING OF APPLICATIONS

Policy in this regard refers to the following:

- Receipt of applications including procedures
- Record keeping
- Evaluation of land needs and evaluation of high priority development potential of land
- Proposals to Council regarding the marketing of high potential development land
- Establishment of interdepartmental technical committees to assist with evaluation of applications
- Valuations
- Writing of reports
- Negotiations with applicants

13. INTERNAL PROCEDURE

13.1 Receipt of application

At receipt of an application, the application must be sent to Councils records department for a control sheet for proper record keeping in terms of National Archives and Records Legislation.

13.2 Writing of reports for adoption by Section 80 Committee meetings

After an application has been allocated with the necessary Control Sheet (refer to 6.1) a report will have to be drafted for adoption by Councils' Section 80 Committee. In terms of the Structures Act of 2003 such report should include the following aspects:

Indication whether the property is required for the provision of basic services i.e. housing. Motivation including the need and desirability for such business venture within area of jurisdiction and how such application will impact on the local economy; Benefits to Council i.e. assessment rates, water and lights, development statistics etc; Recommendation indicating the proposal of alienation and restrictive conditions if necessary.

13.3 Valuation

It is not always viable to have a valuation for a property determined prior to a Council resolution, due to the financial implication of such valuation. It is therefore proposed that the valuation be obtained after the necessary Council resolution has been passed and the necessary confirmation from the prospective purchaser has been received, stating the he/she will be liable for the payment of such valuation in the event that he/she is no longer interested in purchasing the property.

13.4 Sales agreement

If 13.3 above has been complied with a memorandum is written to Council's Legal Department for the drafting of the necessary Sales Agreement. The Contract Management Section is responsible to oversee that the necessary payment of 20% of the determined valuation is paid on date of signature of the Sales.

14. CONDITIONS PERTAINING TO ALIENATION

This refers to general conditions pertaining to the following:

- Sales agreements
- Leasing/letting agreements
- Lease periods
- Contracts

- The signing of contracts
- Payment
- Monitoring of progress and non performance
- Out of hand sales
- Sale/letting to social amenities and other spheres of Government
- Promotion of economic development in previously disadvantaged areas

15. CONDITIONS PERTAINING TO DEVELOPMENT OF LAND

This refers to general conditions pertaining to:

- Information regarding target properties and guidelines for development
- Special conditions pertaining to the development of alienated land
- Responsibilities regarding creation of erven e.g. subdivision and rezoning etc.
- Responsibilities regarding the provision of services
- Responsibilities regarding the submission and approval of layout and site development plans Allowed time frames for development
- Submission of building plans
- Condition pertaining to non performance by developers etc.

16. OTHER DEVELOPMENT SCENARIOS

This refers to conditions pertaining to the following special cases:

- Projecting structures and encroachments
- Privatisation of roads
- Parks and public open spaces
- Erection of walls, fences or barriers on Municipal land, public open space or access control mechanisms in a road reserve
- Procedures for Letting or Closure of Public Passage lanes
- Sale of Viable Land to the State
- Sale of Viable Property to Social Care Organisations
- Sale of Non-viable land
- Lease of Viable land to Sporting Bodies

17. LAND AUDITS AND INVENTORIES

Policy in this regard refers to:

- Annual land audits.

- Keeping and maintenance of land inventories.
- Availability of information to prospective applicants.

18. REVIEW PROCESS

- a) This policy is subject to annual review , unless the Council deems necessary to revisit specific sections of the policy at any given time at the contextual framework, underlying draft principles and strategy in relation to the compilation of a comprehensive Land Disposal Policy as contained in the report be supported.

APPLICATION FORM

APPLICATION FORM TO PURCHASE / LEASE PROPERTY OWNED BY THE MATJHABENG LOCAL MUNICIPALITY

PERSONAL DETAILS OF APPLICANT:

Name & Surname: _____

Postal Address: _____

Tel. (H) _____ (W) _____ (Cell) _____

Facsimile Number: _____

E-mail Address: _____

Should the Applicant be acting on behalf of a third party, a power of attorney and the following details of such party must be provided:

Name & Surname: _____

Postal Address: _____

Tel. (H) _____ (W) _____ (Cell) _____

DETAILS OF PROPERTY BEING APPLIED FOR:

Property description: _____

(Erf no. + Township / Holding no. + Agricultural Holdings / Farm portion + Farm)

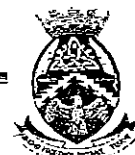
Street Address: _____

Zoning: _____

IMPORTANT NOTE:

☐ A locality map indicating the property must be attached.

[Type text]



- ☐ If applying for a portion of a property, a sketch plan indicating the locality of the said portion together with dimensions must be attached.
- ☐ The locality plan and zoning can be obtained from the MATJHABENG Municipality's town planning Division. Room 427 One Reinet Building. Office Tel: (057) 916 4123 at / Fax: (057) 352 5470.

DETAILS OF APPLICATION: *(Please indicate with X)

- ☐ Short-term lease (maximum 9 years and 11 months) - Period: _____
- ☐ Long-term lease (10 years and longer) - Period: _____
- ☐ Purchase

INTENDED USE OF PROPERTY: *(Full details of the purpose for which the property would be leased/purchased must be given.)

MOTIVATION AND FURTHER COMMENTS: *(A full motivation for the application must be given together with any further details which may have relevance to the application, including the locality of the Applicant's property, should this be relevant.)

Kindly note that it is the Council's policy to dispose of property by public tender and that sale by private treaty will only be considered in exceptional circumstances. The Council does not undertake to sell specific property to an Applicant and the mere fact that an application is considered by the Council does not imply that the Applicant acquires any prior right in the acquisition/lease of such property.

Kindly note further that before an application can be processed, a valuation of the property may be required, the cost of which will be for the Applicant's account. All negotiation for the purchase/lease of property will be based on market related values/rentals. Should the application be granted, the Applicant would further be liable for all costs of survey, advertising, closure, subdivision, rezoning, contributions to engineering or bulk services and any other related costs.

This form should be returned to the following address:

MATJHABENG LOCAL MUNICIPALITY
1ST FLOOR
1 REINET STREET
9460 WELKOM

OR

MATJHABENG LOCAL MUNICIPALITY
P O BOX 708
WELKOM
9460

IMPORTANT NOTE: This application cannot be processed if it is not completed in full and all relevant information and documentation provided.

Signed by Applicant: _____ Date: _____

MEMORANDUM	
TO: TRANSITIONAL MANAGER ADMINISTRATION SERVICES	FROM: TRANSITIONAL MANAGER ENGINEERING SERVICES
REF: 8/8	DATE: 2002-02-19

MATJHABENG POLICY ON BUYING BACK OF ERVEN

Your memorandum dated 14-02-2002 refers.

Attached please find the item with hand written comments.



R. C. SPIES

TRANSITIONAL MANAGER ENGINEERING SERVICES

/ss

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PROPOSED POLICY ON BUYING BACK OF ERVEN IN MATJHABENG

Introduction

In the last ten years the goldfields economy has been ~~experiencing~~ decline due to the general restructuring ~~that was~~ taking place within the gold industry. This restructuring witnessed a situation where mining houses had to battle with new challenges as a result of South Africa's entrance in the world economy. A lot of people were retrenched and a number of industries that benefited both directly and indirectly from the mining industry were closed.

This problem meant that council's source of income also shrank as few ^{or} and few ^{or} ratepayers were able to meet their obligation. One source of council income over the years has been its control over land. Due to a number of reasons people buy land from council and when the economy is not doing well they also would like to hand back the same land.

Reasons for owning land.

- Speculation.
- Build an own house.
- Investment
- Counter act competition
- Inheritance

Speculation

^{is} These category of individuals is mainly people who ^{have} has money to buy land in anticipation that in future ~~that~~ land may be needed for development by either government or other business people. They stand to make a profit in the future for a risk taken today.

Build an own house

^{is} These category of people are mostly people who do not have houses and they believe that they will be able to accumulate enough resources so that over time they will be able to build their own homes. Their first step when they have some funds is to buy a piece of land.

Investment

^{is} These category of people is made up mainly of people in ~~your~~ former disadvantaged areas who buy commercial stands with the aim of building their own businesses. At the

time of buying ~~this stand~~ the affected individual might be doing well in his other business or where he is employed.

Counter act competition

These ^{is} category of people ~~they~~ own land next to their businesses as a strategy to discourage competition from a rival competitor. It is in the long interest of any business to have no competitor in order to make huge profits.

Inheritance

These ^{is} category of people have inherited land left by either a family member or a friend. Sometimes they inherit land as part of a business transaction and they do not need the land.

It is out of the above reasons that council is from time to time asked to allow individuals or groups to re-transfer land to council. The question is whether council should allow that or not.

Facts for not allowing re-transfers.

- Council revenue will be affected negatively.
- If you speculate in land you must accept all the risks involved including a declining economy.
- Council is only able to claim 24 months in arrears when property is re-transferred (to verify)
- Precedent

Facts for allowing transfers.

- In cases of sequestration, liquidation and insolvency council has no choice.
- To delay re-transfer is a further financial burden to the individual whose dream was just to build a house for his/her family.
- You may inherit land which is going to drain your resources, council must allow for flexibility

Proposed policy:

Based on the above discussions it is therefore proposed that the Matjhabeng Municipality policy on the re-transfer of erven should follow this route.

1. Erven re-transfer should be ~~handled on an individual basis to determine the merit of each case.~~ *will create precedents & inconsistencies - not advisable.*
2. A land re-transfer committee made up of two councillors and two officials must be established. This committee will have to report to a relevant section 79 committee on its work.
3. The recommendations of the committee must be based on consensus.
2. All re-transfers must be at the cost of the applicant and an exception can only be done by the Executive Mayor in consultation with the committee.

accepted in the following cases:

- a) *In cases of sequestrations, liquidation & insolvency.*
- b) *Where the property has been owned by the present owner for 10 years or more, subject to all fees ^{taxes} being paid up to date*
- c) *In the case of an inheritance, where the deceased owned the land for 10 years or more.*

5. For every re-transfer that has been approved council will ~~only~~ write-off the arrears only in the case of liquidation, sequestration and insolvency.

A27/2007

DRAFT POLICY FRAMEWORK ON ALIENATION OF LAND (8/B)

1. PURPOSE

To submit before Council the proposed draft Policy on the Alienation of Land within the Matjhabeng Municipal Council.

2. BACKGROUND

When discussing the alienation of residential land one should consider the different types of land that Council is normally requested to alienate. These are:

1. Residential: consisting of one family unit
2. Special Residential: multi family units (flats)
3. Commercial land

Prior to amalgamation, the different towns forming units of the Matjhabeng Local Municipality had their different ways of disposing of land. It is important to note that land should not be differentiated by category for purposes of policy. This varied from:

- 1) By allocation
- 2) Going out to tender,
- 3) Out of hand sales
- 4) Calling for development Proposals

The former Welkom Transitional Local Council used all of the above methods, depending on need. The definition of these methods is as follows:

Allocation

This refers to an instance where a site is given to an individual. For example, when people are being displaced from the area they are living in e.g. T14/2 - Phumla Mqashi to Thubelisha area, and the current upgrading of Hani Park residents to formal land – mostly in the Townships.

Out of Hand Sales

This refers to situations when sites are identified, valued and Council resolves that they be sold at stipulated prices. The buyer can then purchase the site immediately without an item being resubmitted to Council for approval. The method has been used in both the townships and the former white towns.

Tender

The policy is that the land is advertised in the media and sold to the highest bidder. There was usually a reserve price. The tenders were adjudicated according to set criteria and submitted to Council for approval.

Development Proposal

This method was used when there was more than one person or company applying for the same land. The competing parties were requested to each submit their development proposal. These would usually indicate what they intended doing on the land. The best proposal was chosen and recommended to Council for approval.

It needs to be noted that the former Welkom TLC did not, as a matter of policy, sell unserviced land.

Qualification criteria

The following criteria applies to anyone who qualified for land within Matjhabeng:

- a) They must have been South African citizens
- b) They must be in possession of a valid bar coded ID
- c) They must have been over 21 years old or
- d) They must be either a registered Company or Trust
- e) They must have been on a waiting list, if such was used

*** When land was finally sold, the Conditions of Deed of Sale, formed the basis for the sale of land and in most cases it was all-inclusive. Attached on **pages 35 to 37 of the Annexures** is a copy of Conditions for Out of Hand Sales of erven.

The conditions were supposedly well known which meant there were no problems with regard to the sale of land. Although it has to be acknowledged that they may not have been properly communicated. The lack of proper policies also meant that there were accusations of favouritism etc. However, it also be noted that, due to lack of coordination, internal problems such as comments from sister departments were responsible for the delay in the sale of land. The time taken to submit such cases for Council approval could also lengthen the process.

PROPOSED POLICY FRAMEWORK

Industrial and Commercial Land

Council should determine and identify appropriate land, in line with policy of government. Once that has been done and agreed, then a competitive bidding process should be followed, in line with applicable Supply Chain Management Policies. The

bidder who meets the prerequisite requirements, in terms of the policy would acquire land at reasonable rates from Council.

These will form a major part of the revenue stream for collection by the Municipality.

Residential Land

It is Council's prerogative to determine developmental initiatives within the Municipality. Therefore, the Municipal Manager should be empowered to allocate and approve all applications.

The advantage for the Municipality is that all income from rates and taxes, electricity, water income will accrue to the Municipality. Since such a process would be controlled, there would be no way that any developer would proceed without the necessary conditions and approvals.

Qualification / allocation of sites

The Municipality will bear the transfer costs for allocation of land to indigents and RDP houses. All other land will be sold according to the value of the land and Supply Chain Management Procedures.

Church Sites and Schools

There may be an instance when a church or other charitable organization requires additional land for its activities. They should, in the first instance, conduct their activities within the laws and bylaws of the Municipality. The Municipality has a responsibility to allow a charitable organization to conduct its business of assisting communities, all within the constraints of the law. They should not, however, be adversely affected by commercial considerations. It is considered that the Municipal Manager is best placed to deal with these issues. It needs to be noted that these organizations are, in the main, exempted from paying rates and taxes. They are, however, still expected to pay for basic services.

3. POLICY, LEGISLATIVE POSITION

Municipal Finance Management Act
Supply Chain Management Policy

4. RECOMMENDATION

1. That Council approves the draft proposed policy framework on the alienation of land by competitive bidding for commercial and residential enterprises in accordance with the Municipal Finance Management Act (MFMA) and Supply Chain Management Policy.

2. That Council approves that the Municipal Manager deals with churches and schools as required in accordance with the Municipal Finance Management Act (MFMA) and Supply Chain Management Policy.

A27/2007

**DRAFT POLICY FRAMEWORK ON ALIENATION OF LAND (8/B) (P 22:
ANNEXURES P 35 – 37)**

1. PURPOSE

To submit before Council the proposed draft Policy on the Alienation of Land within the Matjhabeng Municipal Council.

COUNCIL RESOLVED: (2007-04-03)

1. That Council **APPROVES** the draft proposed policy framework on the alienation of land by competitive bidding for commercial and residential enterprises in accordance with the Municipal Finance Management Act (MFMA) and Supply Chain Management Policy.
2. That Council **APPROVES** that the Municipal Manager deals with churches and schools as required in accordance with the Municipal Finance Management Act (MFMA) and Supply Chain Management Policy.
3. That the qualification Criteria **BE** in terms of South African Constitution.

A28/2007

CONDITIONS FOR OUT OF HAND SALES OF ERF/ERVEN

1. This erf is sold as it is and no claim for compensation or reduction of the purchase price by reason of the existence of any natural or other disadvantage or for any cause shall be entertained.
2. 10% of the purchase price shall be paid when this agreement is signed and the balance upon registration of the property.
3. In the event of the payment due to Council not being made on due date, the Council shall be entitled to:
 - a) forthwith sue the Purchaser for the whole amount of the purchase price, together with all interest and other money which may then be outstanding or;
 - b) give the Purchaser notice in writing requiring the Purchaser to make such payment within fourteen (14) days from date of such notice and, if the Purchaser fails to make such payment within such period of 14 days, the Council shall have the right to forthwith to cancel this Deed of Sale without recourse to any court of law and to re-offer the property for sale and holding the Purchaser liable in any damages that may be sustained; or
 - c) give the Purchaser notice in writing requiring the Purchaser to make such payment within 14 fourteen days from date of such notice and if the Purchaser fails to make such payment within such period of fourteen (14) days, the Council shall have the right to cancel the sale and in such event any portion of the purchase price which may already have been paid by the Purchaser, shall be forfeited to the Council and be retained by it as "roukoop" and the Purchaser shall have no claim whatever directly or indirectly, for a refund of the whole or any part thereof.
4. The Purchaser accepts liability for sanitation fees rates and taxes and all municipal charges from the date on which the Purchaser signs this agreement. Payment of the aforementioned charges shall be made within 30 days from the date of the first account in respect thereof having been forwarded by the Seller to the Purchaser.
5. The Purchaser shall be given possession of the said property on signing the relative Deed of Sale and as from such date, the said property shall be at the Purchaser's sole risk, loss, profit and expense.
6. The Purchaser shall pay transfer duty within six months from date of sale in terms of Transfer duty Act No 40 of 1949, or any amendment thereof.
7. On written request to the Seller within fourteen (14) days after the date of sale, the pegs will be shown to the Purchaser once free of charge, before fences are erected and foundations are laid.

8. The point already fixed by the Council for connecting the internal sewer system of the erf hereby sold, to the Council's sewer, shall be the only place where such connection will be permitted, and the Purchaser shall ensure that his architects or contractor designs the internal sewer system to conform to this requirement. No alternative point will be allowed owing to the rocky or other formation of the ground.
9. (a) Transfer of the property shall be given by the Seller's conveyances after payment has been made of the full purchase price and interest or on receipt by the Seller of an approved guarantee in respect of the full purchase price and interest and after payment of the costs set out hereunder.
- (b) The Purchaser shall pay all transfer costs, transfer duty, costs of this Deed of Sale and the amounts as set out in paragraph 4 above on request by the Seller's conveyances.
- (c) The Purchaser shall further pay all Value Added Tax on request by the Seller's Conveyances, which tax shall be immediately payable, notwithstanding that any suspensive conditions herein contained has not been complied with.
- (d) It is hereby placed on record that the Seller is a registered vendor in terms of the Value Added Tax Act and that the Purchaser instead of transfer duty, is liable to pay Value Added Tax on the selling price according to the said act.
10. The said property is sold and will be transferred subject to all conditions and servitudes applicable to the type of erf as determined in the Conditions of Establishment and Title.
11. The parties to this agreement agree in terms of section 45 of the Magistrate's Court Act No 32 of 1944 (as amended) to the jurisdiction of the Magistrate's Court of Welkom for any action of whatever nature arising from this agreement.
12. "Bank rate" means the prima lending rate of the City Council's commercial bank.
13. In the event of the Purchaser(s) signing this Deed of Sale in his capacity as a nominee(s) on behalf of a company or close corporation which is to be formed, then such company or close corporation shall be formed and this Deed of Sale shall be adopted and ratified by the company or close corporation within a period of 30 days from date of signature hereof.

In the event further of the Purchaser signing this Deed of Sale in a representative capacity, he hereby warrants to and on behalf of the Seller that he has been duly authorized to act on behalf of his principal.

The Purchaser(s) and/or signatory hereof hereby bind/binds himself/themselves jointly and severally, as surety/sureties and co-principal debtor(s) in solidum for the due and faithful performance by the company/close corporation or principal of the terms and conditions of this Deed of Sale.

Should the company/close corporation not be registered or in the event of the company/close corporation or principal of the signatory failing to adopt and ratify this Deed of Sale, as aforesaid, then the Purchaser shall be personally bound (jointly and severally) as Purchaser(s) in his/their private capacity/capacities.

14. In the event that it is impossible to drain flood water coming from a higher lying stand directly to a public street, the owner of the lower lying stand is forced to accept the waste water coming from the higher lying stand provided that the owner of the higher lying stand from where the waste water flows, be compelled to pay a pro-rate amount of the costs involved of any pipeline or drain which the owner of the lower lying stand finds necessary to install to lead away the aforementioned waste water flowing over his property.
15. A dwelling-house as approved in compliance with the National Building Regulations must be erected on the erf within Two (2) years after date of signature of this Agreement of Sale, or a further period as determined by the Transitional Local Council as from time to time, failure of which the erf will be re-transferred back to the Seller and the Purchaser shall be responsible for the cost thereof. Building plans must be approved by Building Control dept of Council and a builders-hut, which may only be occupied during the construction period of the formal dwelling-house, may be erected on the erf and must be removed after completion of the said dwelling-house.