



MBHASHE LOCAL MUNICIPALITY

All correspondence to be directed to the office of the Municipal Manager
454 Streatfield Street, Dutywa, Eastern Cape Province
Tel: 047 489 5864/34 • Email: info@mbhashemun.gov.za
www.mbhashemun.gov.za

MBHASHE POLICY ON SALE AND DISPOSAL OF MUNICIPAL LAND

2018-2019



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1. PURPOSE

The purpose of this policy is to:

- Guide council of the procedures to be followed on the alienation of Municipal land;
- Ensure compliance with the applicable legislations, regulations and ordinances;
- Ensure fairness, equitable, transparency, cost effectiveness and competitiveness;
- Ensure speedy availability of land to developers and the residents;
- Ensure that Historically Disadvantaged Individuals are economically empowered;
- Ensure that a racial composition of property ownership is substantially changed;
- Ensure that the economic transformation of the municipality is promoted;
- Ensure the promotion of investment and development.

2. VALUES TO BE ACHIEVED BY THE POLICY

- Income generation
- Empowerment of the Historically Disadvantaged Individual's
- Further the aims and objectives of the Spatial Development Framework (SDF) and the Town Planning Scheme of the Municipality

3. PROCUREMENT

The Procurement Bid Committees in terms of the Preferential Procurement Policy Framework Act will evaluate all tenders.

4. PROCESS TO BE FOLLOWED FOR THE ALIENATION

Before any Immovable property is disposed of, a report will be submitted to Council through the relevant standing committee report for Council to take a decision whether the property can be disposed considering amongst other things;

4.1 whether the property requires the provision of basic municipal services and / or development before disposal and/or whether the disposal is required thereof.

4.2 whether the sale is in terms of the development objectives of the municipality



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5. LEGISLATIVE FRAMEWORK

The alienation (Sale and Disposal) of Council land must be executed in terms of the applicable legislation. In this regard the following legislation must be taken into account:

- (a) Constitution of the Republic of South Africa, 1996
- (b) Development Facilitation Act, 1995
- (c) Local Government Municipal Systems Act 32 of 2000
- (d) Local Government: Municipal Finance Management Act 56 of 2003
- (e) Broad Based Black Economic Empowerment Act (Act 53 of 2003)
- (f) Spatial Planning and Land Use Management Bill, 2001-2012
- (g) Intergovernmental Relations Framework Act, 2005
- (h) Housing Act, 1997
- (i) National Development Vision and Plan, 2012
- (j) Spatial Planning and Land Use Management Act 16 of 2013
- (k) Preferential Procurement Policy Framework Act, 2000
- (l) Preferential Procurement Regulations, 2001 as published in government gazette no 34350 dated 08 June 2011 effected from 07 December 2011

6. DISPOSAL OR SELLING OPTIONS

In the process of alienating municipal land and immovable properties it is necessary that Council, as far as it is possible, practical and affordable, give due consideration to promoting access to the Historically Disadvantaged individuals on alienation of municipal immovable property. The various legislations supporting this concept must be observed in the process of implementation.

The alienation of municipal land or immovable property can be dealt with in various ways.

6.1 Public Tender Method

Council shall, in a case where there is an available piece of land to be alienated, place a notice on a local or national newspaper inviting for public to tender. Supply chain policy will also be adhered to, by sending the specifications to the Bid Specifications Committee before a notice and/or advert is done. Upon receipts of applications; tenders received are then referred to the bid committees for evaluation and adjudication.



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The bid adjudication committee will recommend and motivate to the Municipal Manager as to why the selected candidate is found suitable. The Municipal Manager will make a final decision. A 10% deposit is payable by the successful tenderer upon signing of the deed of sale subject to the balance payable within a period of a year from the signing of the Deed of Sale or bank guaranteed mortgage bond is arranged by the buyer.

In terms of the preferential status of tendering, the principles and formulae as stated in the Preferential Procurement Policy Framework Act will be taken into consideration.

6.2. Public Auction Method

The Public Auction Method will be implemented where there is a higher demand for specialized land use e.g. shopping malls, etc., or where the application property is strategically located.

6.4 Residential properties

6.4.1 An advert is placed on the Local Newspaper calling all residents of the municipality to enlist their names as potential buyers for consideration in sale of municipality sites. Sites then get services (if necessary), and get valued at market related price.

6.4.2 The sites then get sold on a first come bases using the data base. The sites get sold on cash basis using bank guaranteed Cheque or any acceptable means of payment or 50% deposit plus one year period to settle the balance.

6.4.3 The 50% is non-refundable that is if the buyer fails to pay the municipality within the required time of a one year period, the council may reverse her decision.

6.4.4 Bias will be for those who are first time buyers that is, those who don't appear on the municipal valuation roll.

6.4.5 Those who allege to have bought sites in the previous years with no valid proof to validate their claim will automatically lose those sites BUT the council may after listening to the allegation, revalue the land and sell it to the claimant on current values.



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6.5 Business Proposals

Certain sites cannot be disposed of using one of the above methods, due to their nature and their intended use, e.g. a particular site is suitable for a big shopping complex development, which therefore excludes the interest of most residents, and might need investors from outside the municipality. A call for development proposal is then made on the Local and national newspapers for the development proposal regarding the subject property.

The proposal gets evaluated, and if necessary, the best applicants are called for presentation. The successful applicant gets awarded the right to purchase or lease the property and develop it in line with business proposal. This shall, amongst others, include the type of development and time frames for implementation.

7. General conditions applicable to all sales

The contract of sale will state that failure to pay the full amount within the reasonable time stated will make the municipality revoke its decision.

8. Valuation of Council Property.

8.1 Determination of selling price

Council owned property is to be sold at a market related selling price including VAT, as determined by the valuer unless the Council resolved otherwise. Comments of the relevant departments of the Municipality including the Town Planning Division on the future development potential of the Council owned property should be taken into consideration by the property division in determining a market related selling price.

All valuations are done in terms of the following principles:

Title deed information

- Full description of the property
 - Size
 - Registered owner/s
 - Purchase date
 - Purchase price
 - Date of registration
 - Existing bonds
 - Limitations (including servitudes, conditions and any endorsements or caveats)
 - Minerals rights
 - Local government information
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- Town Planning Information – (including zonings, rights and other use restrictions)
- Municipal Valuations
- Rates & Taxes payable

Physical description

- Physical address
- Situation / Locality
- Nature of surrounding neighborhood
- Historical background
- Availability of services
- Availability of amenities
- Features of the property – (including dimensions, frontage, contours, accommodation, finishes and other value forming attributes)
- Leases (terms)

Market identification

- Market Conditions – (including going prices, rentals, affordability, financing restrictions, etc)
- Highest and Best Use (over-capitalized)
- Potential target Market
- Comparable properties

Applications of comparables

- Method of valuation
 - Market research on comparable
 - Rejection of data
 - Assumptions and final Adjustments – (the fewer the difference, the more reliable the comparable)
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Conclusion

- Certificate of Market Value – (Definition of Market Value)
- Certificate of Market Rental
- Compensation in the case of expropriation
- Any financial loss or inconvenience, in the case of servitude

9. Exceptions to the market related prices

In terms of section 14 of the Municipal Finance Management Act 2003, (Act 56 of 2003):

2. “A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in sub-section (1), but only after the municipal council, in a meeting open to the public –
 - (e) has considered the fair market value of the asset and the economic and community value to be received in exchanged for the asset.”

The council may therefore in terms of the said Act dispose of immovable property at a price below the market value subject to a Council resolution to do so. The following categories are proposed as such circumstances.

9.1 Small, medium and micro enterprises (SMME)

Those types of businesses require assistance in the form of positive action from Council by increasing their access to amongst others, economic activities and infrastructure.

It should also be noted that these types of businesses contribute towards the creation of employment and have the potential to develop further.

In the light thereof small medium and micro enterprises that comply with the Council policy can purchase council owned land at a nominal amount in the event that the property / properties is/are available for sale.



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The Policy and Implementation Guidelines are intended to cover the sale of real property and the defined scope of real property interest and the disposal of non-fixed corporate assets in the manner of personal property as owned by the Mbhashe Municipality.

11. EFFICIENCY OF POLICY OPTION IN ACHIEVING THE VALUES

11.1 Public Tender Method

This method ensures that the public tender method does not favour purchasers with extensive capital resources to the disadvantage of the small businessman or man on the street but enables HDI's to acquire land.

11.2 Evaluation of Tender

The Council will normally award the contract to the tenderer obtaining the highest number of points, but will not bind itself to do so if reasonable and justifiable reasons prevail, which will have to be adjudicated upon the circumstances of each tender, however such reasons may not violate the provisions of the Preferential Procurement Policy Framework Act or the provisions of the Preferential procurement Regulations. The Council may however prior to the award of the tender cancel the tender if no acceptable tenders were received.

11.3 Residential Properties

The sites get sold on a first come bases using the database. The sites get sold on cash basis, mortgage bond, bank guarantee or 10% deposit plus one year period to settle the balance.

11.4 Public Auction Method

The purpose of this method is to make the alienation process as fair and transparent in the case of where there is high demand of interest on a particular piece of land e.g. for specialized land use like shopping malls, etc, or where the application property is strategically located.

11.5 Business Proposals

This method works more or less the same to the above-mentioned, e.g. a particular site is suitable for a big shopping complex development, which therefore excludes the interest of most residents, and might need investors from outside the municipality. The proposal gets evaluated, and if necessary, the best applicants are called for presentation. The successful applicant gets awarded the right to purchase the property and develop it in line with business proposal.

12. VALUATION OF PROPERTY

Council shall appoint a Professional Valuer who will determine the fair market value of all the identified properties, and this person must be an independent Professional Valuer or Professional associated Valuer registered in terms of the Property



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Professional Act, 2000 (Act 47 of 2000) or any ensuing act of the cost of the purchaser.

13. DEVIATION FROM THE ZONING

- 13.1 Immovable property sold by the municipality shall be inspected regularly by officials of the municipality to ensure compliance with the terms and conditions of the agreement of sale.
- 13.2 The municipality shall at all times when considering the alienation of its immovable assets, take into consideration the municipality's obligation to, as part of its process of Integrated Development Planning, take all reasonable and necessary steps within the framework of national and provincial legislation and policy to identify and designate land for housing.

14. CONDITIONS OF SALE

- 14.1 All costs pertaining to a transaction shall be borne by the buyer, e.g. Survey, advertisement, valuation, rezoning, relocation or provision of services where necessary, etc. Council may, however, waive its right to claim the costs should it be to its advantage to bear the cost. Where necessary, a deposit to cover the costs may be required.
 - 14.2 Where applicable, existing services must be relocated or secured by means of the registration of servitude in favour of the municipality and costs shall be for the account of the buyer.
 - 14.3 Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the municipality, make such consolidation undesirable.
 - 14.4 Where immovable property is sold for development, a condition must be included in the Deed of Sale stipulating that such development must be completed within 3 years from date of purchase. Likewise a condition must be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless an extension has been granted in writing by the municipality.
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- 14.5 Save with prior approval, the property alienated may only be used for the purpose for which it was originally sold and purpose permitted by the Town Planning Scheme regulations.
- 14.6 The agreement of sale shall be finalized and concluded within 60 days from the date of the municipality's official request; failure to comply shall cause the sale to lapse.
- 14.7 The agreement must contain a suspensive condition in respect of property, which is old subject to approval in terms of land use legislation.
- 14.8 The buyer is expected to have constructed the applicable structure within a period not exceeding three years.
- 14.9 Council has the power to repossess the application property should the buyer fail to comply with the conditions of sale.

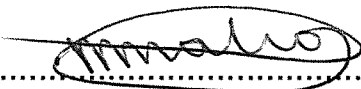
15. DELEGATION

The Council or a Committee responsible for alienation of municipal land, with delegated authority will make decision regarding sale and disposal of land.

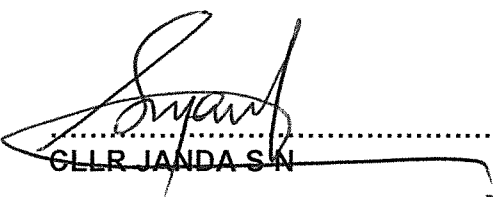
16. CONCLUSION

In conclusion to the above, it is believed that the proposed Policy is in line with and all the relevant pieces of legislation, which have something to do with alienation of land. Again it is believed that all the objectives as identified will be met and that through this policy, the issue of the Previously Disadvantaged Individuals (PDI's) who did not have access to land would be addressed accordingly

APPROVED BY THE COUNCIL AND SIGNED BY:


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MR NAKO M
MUNICIPAL MANAGER

02 July 2018
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DATE


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GLLR JANDA S N

02 July 2018
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DATE
