MIDVAAL LOCAL MUNICIPALITY

LAND ALIENATION AND ACQUISITION POLICY

Approved by Council Resolution:
____

Date of Approval:
____

Effective Date: 1 July 2026

TABLE OF CONTENTS

ABBREVIATIONS

Abbreviation	Meaning
MLM	Midvaal Local Municipality
AO	Accounting Officer / Municipal Manager
ATR	Municipal Asset Transfer Regulations (GG No. 31346)
CFO	Chief Financial Officer
COGTA	Department of Co-operative Governance and Traditional Affairs
DFA	Development Facilitation Act, 67 of 1995
DORA	Division of Revenue Act
HOD	Head of Department
IDP	Integrated Development Plan
LUPO	Land Use Planning Ordinance
MFMA	Local Government: Municipal Finance Management Act, 56 of 2003
MPRA	Local Government: Municipal Property Rates Act, 6 of 2004
MSA	Local Government: Municipal Systems Act, 32 of 2000
MTREF	Medium Term Revenue and Expenditure Framework
MDA	Municipal Demarcation Act, 27 of 1998
PPE	Property, Plant and Equipment
SCM	Supply Chain Management
SDF	Spatial Development Framework
SPLUMA	Spatial Planning and Land Use Management Act, 16 of 2013
VAT	Value Added Tax

1. PURPOSE OF THIS POLICY

The purpose of this Land Disposal and Land Rights Policy is to:

- Provide a comprehensive, transparent, and legally sound framework for the identification, consideration, and disposal of land owned by the Midvaal Local Municipality (MLM);
- Regulate the granting and management of land rights, including leases, servitudes, rights of way, and other limited real rights over municipal land;
- Establish clear processes for the donation of municipal land and the acceptance of land donations or transfers to the municipality;
- Ensure compliance with the Municipal Finance Management Act (MFMA), the Municipal Systems Act (MSA), the Spatial Planning and Land Use Management Act (SPLUMA), the Municipal Asset Transfer Regulations (ATR), and all other applicable legislation;
- Promote sound financial management, accountability, and transparency in all land-related transactions;
- Align land disposal decisions with the municipality's Integrated Development Plan (IDP), Spatial Development Framework (SDF), and broader community development objectives;
- Protect the financial interests of the municipality and the community it serves; and
- Prevent the unlawful, irregular, or inequitable disposal of municipal land.

2. DEFINITIONS

For the purpose of this Policy, any word or expression to which a meaning has been assigned in the MFMA, the MSA, the SPLUMA, or the MPRA shall bear the same meaning in this Policy, and unless the context indicates otherwise:

Capital Asset	Any immovable asset such as land, property or buildings; or any movable asset that can be used continuously or repeatedly for more than one year from which future economic or social benefit can be derived.
Council	The Council of Midvaal Local Municipality, duly constituted in terms of the Constitution and applicable legislation.
Disposal	In relation to a capital asset, includes the sale, donation, exchange, letting, granting of rights, demolition, or any other transaction resulting in transfer or loss of ownership or the granting of real rights to a third party.
Donation (outgoing)	The unconditional or conditional transfer of ownership of municipal land or a real right therein to another party without financial consideration, or at a price below fair market value, in furtherance of community or developmental objectives.
Donation (incoming)	The unconditional or conditional transfer of land or a real right in land to the municipality by a third party, whether without financial consideration or at a subsidised price.
Fair Market Value	The value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell land in an arm's length transaction.
High-Value Asset	A capital asset whose fair market value exceeds R50 million, or 1% of the total value of all capital assets of the municipality as per its latest audited financial statements, whichever is lower; or any amount determined by Council resolution below these thresholds.
IDP	The Integrated Development Plan of Midvaal Local Municipality adopted in terms of section 25 of the Municipal Systems Act.
Land	Any portion of the earth's surface delineated by boundaries and includes any improvements or buildings thereon, as well as any registered rights in land such as servitudes, leases, or rights of way.
Land Rights	Any limited real right in land including but not limited to leases, servitudes, rights of way, usufructs, personal servitudes, and any other right registered or registrable against the title deed of a property.
Lease	A contract in terms of which the municipality grants temporary occupation and use of land to a lessee in exchange for a rental consideration, for a defined period and on defined terms and conditions.
MFMA	Local Government: Municipal Finance Management Act, 56 of 2003, including all regulations promulgated thereunder.
Municipal Land	Any immovable property, land, or real right in land registered in the name of, owned by, or vested in Midvaal Local Municipality.
Municipal Manager	The person appointed as the Municipal Manager (Accounting Officer) of the Municipality in terms of section 54A of the Municipal Systems Act and section 60 of the MFMA.

Organ of State	A national department, national public entity, provincial department, provincial public entity, a municipality or municipal entity, or any other organ of state as defined in section 239 of the Constitution.
Public Open Space	Land set aside or used for the recreational benefit of the public, including parks, gardens, sports fields, and similar facilities.
Reserve Land	Land held by the municipality for future community or infrastructure needs, or land designated for a specific future public purpose.
Servitude	A limited real right registered against a property entitling the holder to use the land in a specified manner or prohibiting the owner from exercising certain rights over the land.
SDF	The Spatial Development Framework adopted by Midvaal Local Municipality as part of its IDP in terms of section 26 of the MSA and SPLUMA.
SPLUMA	Spatial Planning and Land Use Management Act, 16 of 2013, including applicable provincial legislation.
Transfer	In relation to land, means the transfer of ownership or any real right in land by registration in the Deeds Registry.
Surplus Land	Municipal land that has been assessed and determined by Council not to be needed to provide a minimum level of basic municipal services and is surplus to the current and foreseeable requirements of the municipality.

3. CONSTITUTIONAL AND LEGAL FRAMEWORK

3.1 Constitutional Basis

Section 152 of the Constitution of the Republic of South Africa, 1996 provides that the objects of local government include the promotion of social and economic development and the provision of services to communities. Section 153 enjoins municipalities to structure and manage their administration and budgeting and planning processes to give priority to the basic needs of the community and to promote the social and economic development of the community.

The right of access to land as enshrined in section 25 of the Constitution underpins the municipality's responsibility to manage public land in the interests of all citizens, with particular regard to historically disadvantaged communities.

3.2 Legislative Framework

This Policy has been developed in compliance with, and must be read in conjunction with, the following legislation:

Legislation / Instrument	Key Relevance
MFMA, Act 56 of 2003 – Sections 14, 90	Disposal and transfer of capital assets; conditions and procedures
Municipal Asset Transfer Regulations (GG 31346)	Detailed procedural requirements for asset transfers and disposals
MSA, Act 32 of 2000 – Sections 46, 78	Service delivery mechanisms; community participation
SPLUMA, Act 16 of 2013	Land use management; spatial planning; rezoning and subdivision
MPRA, Act 6 of 2004	Property valuation; rating of municipal property
Deeds Registries Act, 47 of 1937	Registration of transfers, servitudes, and real rights
Prevention of Illegal Eviction Act, 19 of 1998	Occupation and eviction from municipal land
Gauteng Planning and Development Act, 3 of 2003	Provincial land use planning requirements
Supply Chain Management Policy	Procurement processes applicable to land transactions
Disposal of Assets Policy	General asset disposal framework
Grants, Donations, Sponsorships and Gifts Policy	Acceptance and making of donations
Property Rates Policy	Valuation and rating considerations
MLM Delegation of Powers	Authority levels for land decisions

3.3 Key Statutory Provisions

Section 14 of the MFMA provides that a municipality may not transfer ownership or otherwise permanently dispose of a capital asset needed to provide a minimum level of basic municipal services. Council must reasonably determine that the asset is not so needed and must consider the fair market value and economic and community value of the asset at a public meeting before any disposal may be authorised.

Section 90 of the MFMA applies the same provisions to municipal entities. The Municipal Asset Transfer Regulations provide detailed procedural requirements for all disposals, including public participation requirements and information statement requirements.

4. OBJECTIVES OF THIS POLICY

The objectives of the Land Disposal and Land Rights Policy are to:

- Ensure that only surplus and non-essential land is disposed of, and that no land required for the provision of basic municipal services is alienated;
- Ensure that all land disposals are fair, equitable, transparent, competitive, and consistent with the SCM Policy and applicable legislation;
- Promote equitable access to land, particularly for historically disadvantaged communities, in alignment with the municipality's IDP and SDF;
- Ensure that the municipality obtains fair market value for land disposed of by sale, unless a structured donation framework applies;
- Provide clear and accessible criteria and procedures for the granting of land rights over municipal land;
- Protect the municipality from legal, financial, and reputational risks associated with land transactions;
- Ensure that all land transactions are properly authorised, recorded, and reported to Council; and
- Maintain an accurate and up-to-date register of all municipal land, land rights granted, and disposals.

5. CATEGORIES OF MUNICIPAL LAND

For the purpose of this Policy, municipal land is classified into the following categories:

5.1 Service Delivery Land

Land used for or required to provide municipal services, including land on which infrastructure, service delivery facilities, depots, offices, treatment works, pump stations, and similar assets are located. This land may not be disposed of without a Council determination that the land is not required for minimum service delivery purposes.

5.2 Public Open Space and Recreational Land

Land proclaimed or used as parks, open spaces, sportsfields, nature reserves, cemeteries, and similar public amenities. Disposal of public open space land requires compliance with special statutory provisions, public participation, and in some instances provincial approval. The municipality shall exercise the greatest caution in disposing of such land.

5.3 Road Reserves and Road Closures

Land forming part of public road reserves, including proclaimed and unproclaimed roads. The closure of public roads and the disposal of road reserve land is subject to specific statutory requirements including the applicable provincial roads ordinance, public notice, and objection processes. Road closures must be referred to the relevant authority for approval before land may be transferred.

5.4 Reserve Land

Land set aside in the municipal land register or approved SDF for a specific future public purpose. Such land may not be disposed of unless Council formally resolves that the future purpose is no longer relevant, and that the land is surplus to requirements.

5.5 Surplus Land

Land that has been formally assessed and determined by Council to be surplus to the municipality's current and foreseeable requirements, and not needed to provide a minimum level of basic municipal services. This is land that is available for disposal in accordance with this Policy.

5.6 Income-Generating Land

Land leased or otherwise utilised for income generation purposes, including commercial and agricultural leases. Such land may be disposed of subject to compliance with existing lease arrangements, tenant rights, and applicable legislation.

5.7 Heritage and Environmentally Sensitive Land

Land with cultural, heritage, or environmental significance. Disposal or development of such land requires compliance with the National Heritage Resources Act, environmental impact assessment requirements, and any conditions imposed by the South African Heritage Resources Agency (SAHRA) or relevant environmental authority.

6. DISPOSAL OF MUNICIPAL LAND

6.1 General Principles

The disposal of municipal land shall at all times be guided by the following overriding principles:

- No municipal land may be disposed of if it is needed to provide a minimum level of basic municipal services;
- All disposals must be fair, equitable, transparent, and competitive;
- Disposals must be consistent with the municipality's SCM Policy, IDP, and SDF;
- The municipality shall, as far as practicable, obtain fair market value for land disposed of, unless the Council has, in accordance with this Policy, approved a donation, subsidised sale, or other social or developmental transaction;
- All disposals must be properly authorised in terms of this Policy and the Delegation of Powers;
- Public participation must be conducted where required by law or where the nature of the disposal warrants community input; and
- All disposals must be reported to Council and reflected in the municipal budget and MTREF.

6.2 Identification of Surplus Land

The identification of land available for disposal shall follow a structured process:

- The HOD: Development and Planning (in consultation with the CFO) shall periodically review the municipal land register to identify land that may be surplus to requirements.
- A preliminary assessment report shall be prepared for each parcel of land identified, which shall include:
  - a description and extent of the land;
  - the current zoning and land use;
  - the current and future service delivery requirements of the land;
  - any existing occupation, lease, or rights granted over the land;
  - a preliminary valuation or value estimate;
  - the IDP and SDF implications of disposal; and
  - a recommendation regarding the method of disposal.
- The Municipal Manager shall present the assessment report to Council for a resolution that the land is not required for minimum service delivery purposes and is surplus to the municipality's requirements.
- Once Council has adopted such a resolution, the land is classified as surplus land and may be disposed of in terms of this Policy.

6.3 Methods of Disposal

Municipal land may be disposed of by the following methods, subject to the provisions of this Policy and applicable legislation:

6.3.1 Public Tender / Competitive Bidding

The primary method of disposal for surplus municipal land is through an open, competitive, and transparent public tender or bid process in accordance with the municipality's SCM Policy. This method ensures that the municipality achieves fair market value and complies with sections 14 and 217 of the Constitution and the MFMA.

6.3.2 Public Auction

The municipality may dispose of land by public auction, either through its own processes or through a duly appointed professional auctioneer. Auction processes must be advertised in accordance with the SCM Policy and this Policy.

6.3.3 Negotiated Sale

A negotiated sale may be conducted in limited circumstances where the SCM Policy and applicable legislation permit deviation from competitive bidding, including where:

- Only one entity has the capacity or statutory right to acquire the land;
- The land is sold to an organ of state for a public purpose;
- The sale is to a sitting tenant in terms of their lease agreement; or
- Other exceptional circumstances justify a deviation, which must be approved by Council and reported accordingly.

6.3.4 Donation of Municipal Land

The municipality may donate land to qualifying entities in terms of the provisions of Section 7 of this Policy.

6.3.5 Land Exchange

The municipality may exchange land with another party where:

- The exchange is in the public interest and aligned with the IDP and SDF;
- Both parcels are independently valued and the exchange is assessed to be fair;
- Council approves the exchange by resolution; and
- The exchange complies with all applicable legislative requirements.

6.3.6 Transfer to Another Organ of State

The municipality may transfer land to another organ of state, including in the circumstances set out in section 9.3 of the Disposal of Assets Policy and Regulation 20 of the ATR, such as:

- Transfer for housing for the poor in terms of a national or provincial housing programme;
- Transfer required by national legislation; or
- Transfer as part of a reorganisation of powers and functions between the municipality and another organ of state.

Transfers to organs of state may be classified as exempted transfers in terms of sections 14(6) or 90(6) of the MFMA and regulation 20 of the ATR. The CFO must confirm the exemption classification in writing before proceeding.

Mandatory conditions for exempted transfers (ATR Regulation 24): Where land needed to provide a minimum level of basic services is transferred to an organ of state under an exempted transfer, the transfer agreement must include the following mandatory conditions:

- Ownership of the land must immediately revert to the municipality if the organ of state receiving the land ceases or is unable to render the relevant service; and
- The transferee may not, without the prior written approval of the municipality, transfer, dispose of, grant a right of use over, or encumber the land in any way.

These conditions must also apply to any replacement, upgrade, or improvements to the original land (ATR Regulation 24(1), (3) and (4)).

Exempted transfer agreement requirements (ATR Regulations 30 and 32): Before entering into any exempted transfer agreement, the receiving organ of state must undertake and document a due diligence exercise on the land and liabilities to be transferred, and the results must be taken into account in the transfer decision. All exempted transfers must be by way of a written agreement signed by both parties, which must include:

- The terms and conditions of the transfer;
- Details of the land, including valuation details and evidence supporting the valuation, encumbrances, servitudes, and rights of access requirements;
- Compensation to be paid (if any) and the terms and conditions for payment;
- The effective date on which risk and accountability are transferred;
- Details of any staff affected by the transfer;

- Where billing, IT, or other administrative systems are to be shared between parties, the basis of that arrangement and any financial risk exposure to the municipality; and
- Where land is to be used by both parties, the basis of sharing and how costs and benefits will be apportioned between them.

The transfer agreement must contain a separate clause stating that the transfer was effected on the basis of exempted capital asset transfer as per the ATR, and that those provisions form part of the agreement (ATR Regulation 30(1) and (2)).

6.4 Valuation Requirements

Prior to any disposal, the land must be independently valued by a registered professional valuer. In accordance with the applicable GRAP standards and the Disposal of Assets Policy, any of the following valuation methods may be used:

- Depreciated Replacement Cost (DRC): the cost to replace the asset less depreciation to account for age and condition;
- Fair Market Value: the value agreed between a knowledgeable willing buyer and a knowledgeable willing seller in an arm's length transaction;
- Historical Cost adjusted for depreciation and impairment: the original purchase price less depreciation and impairment adjustments; or
- Realisable Value: the amount obtainable from the transfer less any transfer and completion costs.

The valuation report must state the method used and comply with the South African Institute of Valuers standards. In accordance with SCM Regulation 40 and the Supply Chain Management Policy, both the valuation certificate and the Council resolution authorising the disposal shall not be older than twelve (12) months at the time of disposal. The valuation certificate, zoning certificate, Council resolution, and all supporting documents pertaining to the sale of the land must accompany the formal request to the SCM Unit for the tender or auction process. Only Council-resolved items will be accepted by the SCM Unit for processing.

Where the land is of high value (as defined), the valuation must be included in the public participation process and submitted to National Treasury for comment.

6.5 Mandatory Council Considerations at the Public Meeting (ATR Regulation 7)

In terms of ATR Regulations 5(1)(b) and 7, before approving in-principle whether to retain, transfer, or dispose of any land, whether high value or not, Council must consider the following mandatory factors at the open public meeting:

- Whether the municipality may need the land at a later date;
- The expected gain or loss on transfer or disposal;
- The compensation for the land and whether it will result in a cost or benefit to the municipality;
- Management of any risk associated with the disposal;
- The impact on the municipality's credit rating and its ability to raise further borrowings in the future;
- Limitations or conditions attached to the land and the consequences of any potential non-compliance with those conditions;
- The cost of the proposed transfer or disposal;
- The transfer of any liabilities and reserves associated with the land;
- Stakeholder comments and recommendations received during the public participation process;
- The impact on the municipality's own strategic, legal, and economic interests; and
- Compliance with the legislative regime applicable to the proposed transfer or disposal.

Council may resolve not to proceed with a disposal without holding a public meeting if it does not wish to consider the transfer or disposal. The obligation to convene the public meeting and apply these factors arises only when Council intends to proceed with the disposal.

6.6 Council Discretionary Conditions on Disposal (ATR Regulation 11)

When Council provides an in-principle decision that land may be transferred or disposed of (whether or not a high-value asset is involved), Council may impose conditions on the disposal, including:

- The manner in which the land is to be sold or disposed of, within the framework set by the SCM Policy and SCM Regulations;
- A floor price or minimum compensation below which the land may not be sold;
- Whether the land may be transferred or disposed of for less than fair market value (subject to Council first applying the Regulation 20(1)(f)(ii) criteria as set out in Section 6.3.4 of this Policy); and
- A framework within which direct negotiations with a specific party may apply, if relevant.

These conditions must be recorded in the Council resolution and communicated to the SCM Unit before the disposal process is initiated.

6.7 High-Value Land Assets

Where land proposed for disposal is classified as a high-value capital asset, the following additional requirements apply:

- Council must authorise a public participation process before any disposal may proceed;
- The AO must, at least 60 days before the Council meeting authorising the disposal:
  - make the proposal and information statement public to all affected communities;
  - invite submissions from affected communities and interested parties; and
  - request the views and recommendations of National Treasury.
- The information statement must include: the valuation, method of valuation, reasons for the proposal, and the expected benefits, proceeds, and gain or loss;
- Council may only authorise the disposal after the public participation process has been concluded and all submissions considered; and
- Council must confirm by resolution that the land is not needed to provide a minimum level of basic municipal service and must consider the fair market value and economic and community value of the land.

6.8 Written Disposal Agreement (ATR Regulation 17)

Once Council has approved the disposal, the actual transfer must be effected by way of a written agreement. In terms of ATR Regulation 17, the disposal agreement must include at minimum:

- The terms and conditions of the transfer or disposal;
- Details of the land and any associated liabilities to be transferred;
- The compensation to be paid and the terms and conditions for payment; and
- The effective date on which risk and accountability for the land are to be transferred.

No transfer of land may be registered in the Deeds Registry unless a written agreement complying with the above requirements has been concluded and signed by both parties.

6.9 Application of Disposal Proceeds and Borrowings (ATR Regulation 16)

Once the municipality has received compensation from the disposal of land, the proceeds must in the first instance be used to discharge any borrowings associated with that land at its redemption date or at another date agreed between the municipality and the lender. Alternatively, the municipality may negotiate with the acquiring party to take over any borrowings associated with the land as part of the compensation arrangement, subject to the lender's agreement. Any remaining proceeds after discharge of associated borrowings shall be dealt with in accordance with Section 11.2 of this Policy.

6.10 Below-Market Transfers to Organs of State (ATR Regulation 20(1)(f)(ii))

Where the municipality proposes to sell or donate surplus land classified as an exempted capital asset to another organ of state for less than fair market value, Council must first consider and record the following factors in its resolution:

- Whether the land may be required by the municipality at a later date;
- The expected loss expected to result from the proposed transfer;
- The extent to which any compensation to be received will result in a significant economic or financial cost or benefit to the municipality;
- The risk and rewards associated with the operation or control of the land in relation to the municipality's interests;
- The effect that the proposed transfer will have on the ability of the municipality to raise long-term or short-term borrowings in the future;
- Any limitations or conditions attached to the land or its transfer, and the consequences of potential non-compliance;
- The estimated cost of the proposed transfer;
- The transfer of any reserve funds associated with the land;
- The interests of any affected organ of state, the municipality's own strategic, legal, and economic interests, and the interests of the local community; and
- Compliance with the legislative regime applicable to the proposed transfer.

7. DONATION OF MUNICIPAL LAND

7.1 General Principles

The donation of municipal land represents a departure from the general requirement to obtain fair market value for land disposals. It is therefore subject to stricter oversight and approval requirements. The municipality recognises that the donation of land may serve legitimate and important social, developmental, or community objectives. All donations must, however, be justified on clear grounds of community benefit and must comply with all applicable legislative requirements.

No donation of municipal land may be made unless Council has:

- Resolved that the land is surplus to the municipality's requirements and not needed to provide a minimum level of basic municipal services;
- Considered the fair market value and community and economic value foregone;
- Satisfied itself that the donation serves a legitimate community, social, educational, religious, or developmental purpose aligned with the IDP; and
- Conducted or waived (in accordance with applicable law) any required public participation process.

7.2 Types of Land That May Be Donated

Subject to the requirements of this Policy, the following categories of land may be considered for donation:

7.2.1 Social and Community Facilities

Surplus municipal land may be donated to qualifying non-profit organisations, religious institutions, community organisations, or organs of state for the development of:

- Places of worship;
- Schools, educational facilities, and crèches;
- Community halls and public meeting facilities;
- Clinics, health facilities, or care centres;
- Shelters for vulnerable persons, including the homeless, abused women and children, and the elderly;
- Sports and recreational facilities for communities; and
- Similar social and community infrastructure.

7.2.2 Subsidised Housing and Human Settlement Development

Land may be donated or transferred at nominal or no cost to national or provincial organs of state for housing for the poor in terms of a national or provincial housing programme, as contemplated in regulation 20 of the ATR. Such transfers are classified as exempted transfers. Land may also be transferred to communities or qualifying beneficiaries in terms of approved housing programmes.

7.2.3 Economic Development and Job Creation

In exceptional circumstances, and where a compelling community benefit can be demonstrated, Council may resolve to donate or sell land below market value to entities undertaking projects of significant economic development value to the Midvaal community, provided that:

- The project will create measurable employment opportunities for local residents;
- The entity is not a profit-driven entity acting solely in its own commercial interest;
- The donation is linked to binding performance conditions enforceable by the municipality; and
- A cost-benefit analysis has been prepared and considered by Council.

7.2.4 Organ of State Transfers

Land may be donated or transferred at no cost to other organs of state in the circumstances set out in regulation 20 of the ATR, including for the provision of government services and infrastructure of public benefit.

7.3 Land That May NOT Be Donated

The following categories of land may not be donated:

- Land required to provide a minimum level of basic municipal services;
- Land designated in the SDF for a specific future public purpose, unless Council has formally reviewed and amended the SDF or confirmed by resolution that the purpose is no longer applicable;
- Public open space land, parks, and recreational land (except to organs of state for public benefit purposes with appropriate conditions);
- Land subject to pending litigation or unresolved land claims;
- Land encumbered by conditions of title that prohibit donation or transfer; and
- Land to private individuals, companies, or entities for private commercial benefit, except as expressly authorised by Council in exceptional circumstances.

7.4 Mechanisms and Criteria for Donation

Applications for a donation of municipal land must be considered against the following criteria:

Criterion	**Consideration**
Community Benefit	Does the proposed use directly benefit the Midvaal community? Is the benefit measurable and sustainable?
IDP Alignment	Is the proposed use aligned with the priorities and objectives of the current IDP?
SDF Alignment	Is the proposed use consistent with the SDF land use designation and spatial vision for the area?
Organisational Capacity	Does the applicant have the financial, technical, and organisational capacity to develop and maintain the land for the proposed purpose?
Non-Profit Status	Is the applicant a registered non-profit organisation (NPO) or public benefit organisation (PBO)?
Conditions of Use	Can binding conditions of use and reversion clauses be included in the donation agreement?
Financial Implications	What is the fair market value foregone? What is the financial impact on the municipality?
Conflict of Interest	Are there any actual or potential conflicts of interest in the proposed donation?
Legal Compliance	Does the donation comply with all applicable statutory requirements?

7.5 Application Process for Donation

Any person or organisation seeking a donation of municipal land must submit a formal written application to the Municipal Manager containing:

- Full details of the applicant, including registration documents for NPOs or PBOs;
- A description of the land applied for;
- The proposed use of the land and how it serves the community;
- A detailed development plan and timeline;
- Proof of funding or financing for the proposed development;
- A business plan or feasibility study;
- A declaration of any conflict of interest; and
- Any other information requested by the Municipality.

Applications will be assessed by the relevant HOD and the CFO, who shall prepare a report and recommendation to Council. Council has the sole authority to approve donations of municipal land. The Municipal Manager may not approve donations.

7.6 Conditions Attaching to Donations and Donation Agreement Content

All donations of municipal land shall be subject to at least the following conditions, incorporated into the deed of donation and registered conditions of title:

- The land may only be used for the specific purpose stated in the donation agreement;
- The land may not be sold, transferred, or further donated without the prior written consent of Council;
- The land shall revert to the municipality if the donee fails to develop the land within the agreed period, abandons the use, or uses the land for any purpose other than that stipulated;
- The donee shall be responsible for all rates, taxes, and service charges applicable to the land;
- The municipality shall retain a right of first refusal should the donee seek to dispose of the land or the improvements thereon; and
- The donee shall provide annual reports to the municipality on the use and development of the land.

In addition, and consistent with the standards set out in the Grants, Donations, Sponsorships and Gifts Policy, all donation agreements must be in writing and must at minimum address the following:

- Identify all parties to the donation (including third parties);
- Specify the exact nature and value of the donation;
- Specify the payment terms or transfer terms, including how and when the transfer will be effected and to whom;
- Specify the length of the donation agreement and any options or conditions for renewal;
- Describe what the land is to be used for as set out in the approved development plan;
- Specify in detail the rights and benefits of both parties, and set out any special conditions that may apply;
- Set out financial accountability requirements applicable to the donee;
- Specify what must happen to any surplus land, improvements, or funds should the purpose of the donation cease;
- Specify warranties and details concerning liability, including limits to liability and responsibility for public liability and insurance;
- Stipulate that the municipality is under no obligation to extend or renew the donation arrangement beyond the period specified;
- Specify who owns any intellectual property or improvements which might arise from the use of the land;
- Address the relationship between the donee and its employees or agents in connection with the land;
- Consider methods to secure compliance with the donee's obligations;
- The municipality's corporate identity and branding requirements must be adhered to in all materials produced in connection with the donated land or facilities;

- Donation agreements must include the municipality's right to review all marketing or promotional materials associated with the use of the land; and
- The agreement must indemnify the municipality against risk arising from the donee's occupation or use of the land.

The donee must provide a close-out report at the end of any project funded through or related to the donation, setting out financial accountability and confirming compliance with conditions.

8. ACCEPTANCE OF DONATIONS AND TRANSFERS OF LAND TO THE MUNICIPALITY

8.1 General

The municipality may receive land by way of donation, bequest, government grant, or transfer from a third party. The acceptance of such land must be consistent with the municipality's IDP, SDF, and service delivery obligations, and must be properly evaluated before acceptance. As per the principles established in the Grants, Donations, Sponsorships and Gifts Policy, the municipality should not simply accept all offers of land without considering the implications.

8.2 Evaluation Criteria

Before accepting a donation or transfer of land, the municipality shall assess:

- Whether the acceptance creates an expectation of further work, contracts, or support for the organisation or person making the donation;
- Whether the land is consistent with the IDP and SDF and serves a community need;
- The condition of the land, including any contamination, environmental liabilities, or structural encumbrances;
- The rates and services obligations that will be assumed by the municipality;
- Any conditions attached to the donation and whether such conditions are acceptable;
- The financial and operational implications of accepting and maintaining the land;
- Whether the land is encumbered by servitudes, rights of way, leases, or other encumbrances;
- Whether there are any pending disputes, litigation, or land claims relating to the land; and
- Whether the donation may have financial, operational, or reputational consequences for the municipality in the future, and whether it is desirable to incur such consequences.

If it is found that a donation of land is offered or granted with the intention of being an inducement or reward for the awarding of any form of bid, or that it infringes on the ethical standards of the SCM Policy (Regulation 46), the donation may not be accepted.

8.3 SCM Disclosure Requirements (SCM Regulations 47 and 48)

All donations or transfers of land offered or granted to the municipality must be submitted to the Municipal Manager for approval. No person other than the Municipal Manager may authorise the acceptance of donations of land, save that the Executive Mayor may use his/her discretion in respect of land grants where so authorised. All donations of land accepted by the municipality must be declared to National Treasury by the CFO in terms of Section 48 of the SCM Regulations, where required. Each HOD must report to the CFO by no later than 15 July annually on all donations promised, offered, or granted in connection with land, whether directly or through an intermediary, by any person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed of or to be disposed of. All donations of land must be paid into or registered in the name of the municipality's primary account or property register.

8.4 Authority to Accept

The acceptance of any donation or transfer of land to the municipality must be authorised by Council by resolution. The Municipal Manager shall present a report to Council with a recommendation, supported by a legal opinion confirming the validity of the transfer and the nature of any conditions attached.

8.5 Reporting to Council on Incoming Land Grants

The end-user department receiving an incoming land grant or donation must report to Council upon receiving confirmation of the grant on the following:

- Description of the land grant or donation received;
- Value or estimated value of the land;
- Purpose of the grant or donation;
- Conditions of the grant or donation;
- Implementation plan for the land (if applicable); and
- Expected outcomes.

After the transfer and any development is completed, the relevant department must report to Council on the date of transfer, actions performed, actual expenditure incurred, compliance with conditions, and the final outcome. This applies to ad hoc grants received during the year and not capital projects budgeted for as part of the approved IDP Capital Investment Programme.

8.6 Conditions That Are Unacceptable

The municipality shall not accept a donation or transfer of land subject to conditions that:

- Require the municipality to provide services or financial support beyond its IDP commitments;
- Restrict the municipality's ability to use or manage the land in the public interest;
- Compromise the municipality's autonomy, decision-making authority, or constitutional obligations;
- Create an expectation of favourable treatment in any future municipal procurement or land transaction; or
- Impose obligations that create recurring expenditure not provided for in the MTREF budget.

9. ACQUISITION OF LAND BY THE MUNICIPALITY

9.1 General Principles

The municipality may acquire land by purchase, expropriation, donation, grant, exchange, or any other lawful means. All acquisitions of land must be:

- Aligned with and justified by the IDP, SDF, and the municipality's service delivery and infrastructure plans;
- Approved by Council or a delegated authority within the parameters of the Delegation of Powers Policy;
- Budgeted for in the approved municipal budget and MTREF;
- Compliant with the MFMA, the SCM Policy, SPLUMA, the Expropriation Act, and all other applicable legislation;
- Preceded by an independent valuation to confirm fair market value; and
- Recorded in the Land Register and Asset Register upon transfer.

9.2 Justification and Need Assessment

Before any land acquisition may be authorised, the relevant HOD must prepare a written needs assessment report demonstrating:

- The specific purpose for which the land is required (e.g. service delivery infrastructure, public open space, road widening, housing, community facilities);
- That the land is consistent with the IDP and SDF;
- That alternative municipal-owned land is not available or suitable for the intended purpose;
- A preliminary valuation or market estimate of the land;
- The total acquisition cost (purchase price, transfer costs, VAT, conveyancing fees, and any remediation costs);
- The source of funding for the acquisition and confirmation that it is provided for in the approved budget or MTREF;
- The anticipated operational costs of the land after acquisition; and
- Any encumbrances, restrictions, or conditions of title affecting the land.

The Municipal Manager shall present the needs assessment report to Council for approval of the acquisition, together with the CFO's confirmation of available funding.

9.3 Methods of Acquisition

9.3.1 Purchase by Negotiation

The municipality may purchase land from a willing seller by direct negotiation. The purchase price must reflect fair market value as determined by an independent registered valuer. The SCM Policy applies to all procurement of professional services in connection with the acquisition. The purchase agreement must be reviewed and approved by the Municipal Manager.

9.3.2 Expropriation

Where land is required for a public purpose or in the public interest and cannot be acquired by agreement, the municipality may expropriate land in accordance with the Expropriation Act, 13 of 2024 (as amended) and section 25 of the Constitution. Expropriation must be authorised by Council by resolution. The municipality must pay just and equitable compensation as determined in accordance with section 25(3) of the Constitution and the Expropriation Act. The Municipal Manager is responsible for initiating, managing, and overseeing all expropriation proceedings on behalf of the municipality. The Municipal Manager must ensure compliance with all procedural requirements under the Expropriation Act, including the issuing of notices, the appointment of professional valuers to determine compensation, and the conduct of any negotiations or court proceedings. Expropriation is a power of last resort and may only be pursued after genuine and documented attempts to acquire the land by agreement have failed.

9.3.3 Acquisition by Exchange

The municipality may acquire land in exchange for other municipal land or assets. Land exchanges must comply with the disposal provisions of this Policy in respect of the land given up, and with the acquisition provisions in this Section in respect of the land received. Both parcels must be independently valued and the exchange approved by Council on the basis that it is in the public interest and fair to the municipality.

9.3.4 Acquisition by Donation or Grant

The municipality may acquire land by donation or grant from private persons, other organs of state, or international organisations. All incoming land donations and grants must comply with Section 8 of this Policy (Acceptance of Donations and Transfers of Land to the Municipality).

9.3.5 Acquisition from Another Organ of State

The municipality may acquire land from another organ of state, including by way of transfer, intergovernmental agreement, or in terms of a housing or infrastructure programme. Acquisitions from organs of state must comply with applicable intergovernmental frameworks, SPLUMA, and relevant programme legislation. The CFO must confirm that the acquisition is properly budgeted and that all intergovernmental transfer conditions are met.

9.3.6 Servitudes and Other Real Rights

The municipality may acquire servitudes and other limited real rights over privately owned land for the purpose of installing and maintaining municipal infrastructure (pipelines, cables, stormwater, access). Acquisition of servitudes must be by notarial deed registered in the Deeds Registry. Compensation must be agreed with the landowner or determined by a court. Where agreement cannot be reached, the municipality may apply to expropriate the servitude in terms of the Expropriation Act.

9.4 Valuation Requirements for Acquisitions

All land acquisitions must be preceded by an independent valuation by a registered professional valuer. The valuation must:

- Be GRAP-compliant and state the method used (fair market value is the primary basis);
- Be no older than twelve (12) months at the time of concluding the purchase agreement;
- Be made available to Council as part of the acquisition approval report;
- Take into account any encumbrances, conditions of title, or servitudes affecting the value; and
- Be used as the basis for negotiation of the purchase price.

The municipality shall not pay more than the independently determined fair market value for land unless exceptional circumstances have been approved by Council by special resolution, with full reasons recorded.

9.5 Budgeting and Funding of Land Acquisitions

No land acquisition may be concluded unless the purchase price and all associated costs are provided for in the municipality's approved capital budget or MTREF. The CFO must confirm budget availability in writing before any offer to purchase is made. Funding sources for land acquisitions may include:

- Municipal own revenue allocated to the capital budget;
- Capital Replacement Reserve or other approved reserves;
- External grants or conditional transfers (subject to grant conditions);
- Long-term borrowings, subject to compliance with the Borrowing Policy and MFMA sections 45-49; or
- Contributions from developers or other parties in terms of approved bulk developer contribution agreements.

Where land acquisition is to be funded by long-term borrowings, the CFO must confirm compliance with the Borrowing Policy and the municipality's debt capacity before approval is sought from Council.

9.6 Purchase Agreement Requirements

All land acquisitions by purchase must be concluded by way of a written agreement of sale complying with the Alienation of Land Act, 68 of 1981, and must include at minimum:

- Full details of the land (erf/farm number, extent, and physical description);
- The agreed purchase price and payment terms;
- The date of occupation and date of transfer;
- A full description of any encumbrances, servitudes, or conditions of title;
- Warranties by the seller regarding title, encumbrances, and physical condition;
- Provisions dealing with rates, taxes, and service charges up to and from transfer;
- Any conditions precedent (e.g. Council approval, budget confirmation, due diligence); and
- Conveyancing arrangements and responsibility for transfer costs.

All purchase agreements must be reviewed by Legal Services before signature. The Municipal Manager or duly delegated official must sign the agreement.

9.7 Due Diligence

Before concluding any land acquisition, the municipality must conduct a due diligence assessment that includes at minimum:

- A title deed investigation confirming ownership, conditions of title, and encumbrances;
- A cadastral survey confirming extent and boundaries;
- An environmental screening to identify any contamination, wetlands, heritage sites, or other environmental constraints;
- A town planning assessment confirming current zoning and land use rights, and whether rezoning will be required;
- A structural assessment for any buildings on the land (where applicable);
- Confirmation that there are no pending litigation, land claims, or disputes affecting the land; and
- A rates clearance check.

The results of the due diligence must be reported to Council as part of the acquisition approval report. The municipality may withdraw from an acquisition if the due diligence reveals material concerns that cannot be resolved.

9.8 Registration and Asset Register Update

Upon transfer of ownership, the following must be completed:

- The land must be registered in the name of the municipality in the Deeds Registry by appointed conveyancers;
- The land must be entered into the Land Register under the written authority of the CFO, in compliance with the Fixed Asset Management Policy ;
- The acquisition cost (purchase price plus all associated costs) must be capitalised in the Asset Register as a PPE addition at cost, in accordance with GRAP 17;
- The relevant rates and services accounts must be updated to reflect the municipality as owner; and
- The CFO must ensure the land is reflected in the appropriate asset category in the annual financial statements.

10. REAL RIGHTS AND OTHER LAND RIGHTS OVER MUNICIPAL LAND

10.1 General Principles

The municipality may grant various forms of real rights and other land rights over municipal land. All such rights must be properly authorised, documented, and where required by law registered in the Deeds Registry. The following overriding principles apply to all land rights granted by the municipality:

- Land rights shall not be granted over land required for the provision of basic municipal services, except where the right is ancillary to or serves service delivery (e.g. a services servitude for bulk infrastructure);
- All land rights must be consistent with the zoning, SDF, and IDP;
- Fair market consideration shall be charged for all land rights unless Council has specifically approved a departure for a legitimate public benefit purpose;
- Servitudes for organs of state infrastructure or public utility purposes may be granted at nominal or no cost, with Council approval;
- The municipality shall retain sufficient rights of access and maintenance over all land in which servitudes or other rights are granted;
- Land rights shall not be granted in perpetuity unless there is a compelling reason specifically approved by Council;
- All land rights must be formally documented in writing; and
- The Municipality must record all granted land rights in the Land Register and Asset Register.

10.2 Leases

10.2.1 General

A lease of municipal land is a contractual arrangement in terms of which the municipality, as lessor, grants a lessee temporary and exclusive occupation and use of a defined area of municipal land for a specified period and in exchange for a market related rental. Leasing is the primary mechanism by which the municipality generates income from and permits beneficial occupation of its income-generating and surplus land without permanently alienating ownership. All leases of municipal land must therefore be properly authorised, competitively procured, documented, monitored, and enforced to ensure that the municipality retains control, receives fair market value, and can recover possession on termination.

No lease of municipal land may be entered into except in accordance with the process set out in this section. Any purported lease concluded without compliance with this process shall be void and of no effect as against the municipality, and any occupation arising from such an arrangement shall be treated as unauthorised occupation in terms of Section 16 of this Policy.

10.2.2 When Leasing May Be Permitted

The municipality may enter into a lease of municipal land/property in the following circumstances:

- The land/property has been classified as income-generating, surplus, or reserve land and is not required for the provision of a minimum level of basic municipal services at the time of the letting;
- The proposed use of the land/property is consistent with its current zoning, the IDP, and the SDF;
- The letting has been put out to competitive tender or procured through the SCM bid committee process in accordance with the SCM Policy and SCM Regulation 40, unless a legitimate deviation applies;
- An independent market rental valuation has been obtained confirming that the rental to be charged is market-related;
- The proposed lessee is not a person or entity that has been restricted from doing business with the municipality, is not in arrears on any municipal account, and has no undisclosed conflict of interest; and

- The required authorisation has been obtained at the correct level in terms of the Delegation of Powers Policy (short-term leases up to 2 years by delegated authority; leases exceeding 2 years by Council resolution; leases of 10 years and above with a prior public participation process).

10.2.3 Application for a Lease

Where the municipality has identified land available for leasing and has initiated a competitive letting process, prospective lessees must respond to the invitation to tender or bid in accordance with the SCM Policy. Where an unsolicited application for the lease of municipal land is received, Section 12 of this Policy (Unsolicited Bids) applies, and the application must be referred to the Municipal Manager for assessment before any further steps are taken.

Whether responding to a formal letting process or submitting an unsolicited application, any prospective lessee must provide the following information:

- Full details of the applicant, which must include:
  - for a natural person, a certified copy of identity document and proof of residential address.
  - for a company, close corporation or co-operative; registration documents, certificate of incorporation and company registration number;
  - for a trust, a copy of the trust deed and letter of authority;
  - for any other juristic person, proof of the legal status of the entity and the authority of the signatory;
  - and in all cases a valid tax clearance certificate or tax compliance status confirmation from SARS, and CSD registration where required by the SCM Policy;
- The proposed use of the land and confirmation that the proposed use is consistent with the current zoning and the IDP;
- The proposed lease period;
- A business plan or development plan, including details of any improvements the applicant proposes to make to the land;
- Proof of financial capacity to pay the rental and maintain the land throughout the proposed lease period;
- A declaration of any actual or potential conflict of interest with the municipality; and
- Any other information the municipality may reasonably require.

The relevant HOD shall assess all applications and submissions received through the SCM process and prepare an evaluation report and recommendation for submission to the Bid Evaluation Committee and thereafter to the Municipal Manager or Council, as required by the applicable delegation. Leases exceeding two years must be referred to Council for approval. Long-term leases of ten years and above additionally require a public participation process to be conducted before Council may approve the lease.

10.2.4 Conditions of Every Lease

In addition to the minimum requirements set out in the table in Section 10.2 above, every lease of municipal land must incorporate the following conditions, which apply as a minimum and may not be waived without Council approval:

- The lessee may only use the leased land for the specific permitted use defined in the lease agreement. Any use of the land for a purpose other than the permitted use constitutes a material breach of the lease;
- The lessee must comply with all applicable legislation, by-laws, and regulations in the use and occupation of the leased land throughout the lease period;
- Rental must be paid punctually on the due date stipulated in the lease agreement. Failure to pay rental by the due date will attract interest at the rate prescribed in the municipality’s Credit Control and Debt Collection Policy;

- Rental shall be reviewed annually in line with the Consumer Price Index (CPI) or prevailing market conditions, whichever is higher, unless the lease agreement specifies an alternative escalation mechanism approved by Council;
- The lessee must maintain the leased land and all improvements thereon in a clean, safe, and good state of repair throughout the lease period, to the reasonable satisfaction of the municipality;
- No permanent structures or improvements may be erected on the leased land without the prior written approval of the municipality and, where required, the relevant planning authority. All improvements erected with or without approval vest in and become the property of the municipality on termination of the lease, unless the lease expressly provides otherwise;
- No subletting, cession, or assignment of the lease or any right thereunder is permitted without the prior written consent of the municipality in terms of Section 10.15 of this Policy;
- The municipality reserves the right to inspect the leased land at any reasonable time on reasonable prior written notice to the lessee for the purpose of assessing compliance with the lease conditions;
- On termination or cancellation of the lease for whatever reason, the lessee must vacate the leased land immediately and restore it to its original condition, fair wear and tear excepted, unless the municipality directs otherwise in writing; and
- The lessee indemnifies the municipality against all claims, damages, losses, and liabilities arising from the lessee's occupation and use of the leased land.

10.2.5 Lease Agreement Requirements

All leases of municipal land must be in writing and must, in addition to the conditions set out above, include at minimum:

- Full identification of the lessor (the municipality) and the lessee, including the lessee's registration number, VAT number (if applicable), and CSD registration;
- A precise description of the leased land, including erf or farm number, extent, physical address, and a plan or sketch demarcating the leased area where only a portion of a larger erf is leased;
- The commencement date, duration, and expiry date of the lease;
- The monthly rental, payment date, escalation rate or mechanism, and banking details for payment;
- The specific permitted use;
- Provisions governing the lessee's maintenance obligations;
- Provisions dealing with improvements, approvals required, ownership on termination, and removal obligations;
- A no-subletting without consent clause;
- Cancellation provisions, notice periods, grounds for early termination, and the consequences of breach;
- The municipality's inspection and enforcement rights;
- An indemnity clause in favour of the municipality; and
- A restitution clause requiring the lessee to restore the land to its original condition on termination.

Legal Services must review all lease agreements before signature. The Municipal Manager or duly delegated official must sign the lease agreement on behalf of the municipality. A copy of every executed lease agreement must be lodged with the relevant HOD and the CFO and must be recorded in the Register of Land Rights.

10.2.6 Renewal of Leases

No lease of municipal land shall renew automatically by operation of a tacit relocation or any other implied renewal mechanism. Any continued occupation of the leased land after the expiry date of the lease, without a new or renewed written lease agreement signed by both parties, shall constitute unauthorised occupation and shall be addressed in terms of Section 16 of this Policy.

Where a lessee wishes to renew a lease of municipal land, the following process applies:

- The lessee must submit a written request for renewal to the Municipal Manager no later than six (6) months before the expiry date of the existing lease;

- The relevant HOD shall assess whether the land remains available for letting, whether the lessee has complied with all conditions of the existing lease, and whether the proposed renewal terms are consistent with current market conditions and the IDP;
- An updated independent market rental valuation must be obtained before renewal terms are finalised;
- Renewal for a period that, when combined with the original lease term, results in a total occupation period exceeding two years requires Council approval. Renewals resulting in a total period exceeding ten years additionally require a public participation process; and
- Where the land is to be re-let and a new competitive process is warranted, the municipality shall not be obliged to renew the existing lease and may initiate a fresh competitive letting process open to all qualifying parties.

10.2.7 Monitoring and Compliance

The municipality shall actively monitor all leases of municipal land to ensure compliance with the lease agreement and all conditions of letting. The following monitoring obligations apply:

- The relevant HOD shall maintain a register of all active leases of municipal land, cross-referenced to the Register of Land Rights maintained by the relevant HOD. The lease register shall record the lessee's details, the leased area, the commencement and expiry dates, the current rental, the escalation date, and the compliance status of the lease;
- Rental payments shall be monitored monthly by the Finance Department. Any rental arrears must be reported to the relevant HOD within 14 days of the due date and pursued in terms of the Credit Control and Debt Collection Policy;
- The CFO shall review all active leases annually and report to Council on leases due to expire within the next twelve months, leases in arrears, and any compliance concerns identified during inspections; and
- Where a breach is identified, the municipality shall issue a written notice of breach to the lessee specifying the breach and requiring remedy within a period not exceeding 20 (twenty) business days. If the breach is not remedied within the notice period, the municipality may proceed to cancel the lease and recover possession of the land.

10.2.8 Unlawful Occupation and Consequences of Breach

Where a lessee materially breaches the lease agreement, occupies the leased land after the expiry or cancellation of the lease, or occupies municipal land without a valid lease agreement, the municipality shall:

- Issue a written notice to the lessee or occupant setting out the breach or unlawful occupation and requiring remedy or vacation within a reasonable period;
- Cancel the lease on notice in accordance with the cancellation provisions of the lease agreement and applicable law;
- Take all legal steps necessary to recover possession of the municipal land, including eviction proceedings in terms of the Prevention of Illegal Eviction Act (PIE Act) where applicable;
- Recover from the lessee or occupant all rental and other amounts outstanding, together with interest and any damages suffered by the municipality as a result of the breach or unlawful occupation; and
- Report the matter to the Municipal Manager and Council as part of the quarterly land report.

The municipality will not give retrospective approval to an occupation that arises from an expired or cancelled lease. Any regularisation of such occupation must follow the competitive letting process prescribed by this Policy. A person who has previously been evicted from municipal land for breach of a lease agreement or for unlawful occupation may not be considered as a prospective lessee of any other municipal land for a period of five (5) years from the date of eviction, unless Council resolves otherwise by special resolution with full reasons recorded.

10.3 Praedial Servitudes

A praedial servitude is a real right registered against the title deed of a property (the servient tenement) in favour of an adjoining or nearby property (the dominant tenement). The municipality may grant or acquire praedial servitudes. Common types arising in municipal practice include:

- Right of way servitudes - permitting access across municipal land to a neighbouring property, or in favour of the municipality across privately owned land;
- Drainage and stormwater servitudes - entitling the holder to drain water across or through the servient land;
- Aqueduct servitudes - permitting the passage of water through pipes or channels across the servient land;
- No build servitudes - restricting the owner of the servient land from erecting structures within a defined area; and
- View or light servitudes - restricting development that would obstruct views or light.

Requirements: All praedial servitudes must be registered by notarial deed in the Deeds Registry. The municipality must obtain a land surveyor's diagram or SG diagram showing the extent of the servitude area. Compensation to the servient owner must be agreed or, if not, determined by a court. All praedial servitudes granted by or in favour of the municipality must be reflected in the Land Register.

10.4 Personal Servitudes

A personal servitude is a real right registered in favour of a specific person (not a property), granting that person a right to use or enjoy municipal land in a defined way. The most common personal servitudes in municipal practice are:

10.4.1 Usufruct

A usufruct entitles the holder to use and enjoy municipal land and collect its fruits (income or produce) for a defined period or for the holder's lifetime, without being able to alienate or encumber the land. The municipality may grant a usufruct over land to a community organisation, non-profit entity, or individual for a legitimate purpose, subject to Council approval. A usufruct must be registered by notarial deed and lapses on death of the holder (if granted for a lifetime) or at the end of the agreed period.

10.4.2 Usus (Right of Use)

A usus is a more limited right than a usufruct, entitling the holder to use the land for personal benefit only, without the right to the fruits or income of the land. This right is personal, non-transferable, and may be appropriate for residential occupation of municipal land by an individual in limited circumstances approved by Council.

10.4.3 Habitatio (Right of Habitation)

A habitatio entitles the holder to occupy and live in a building or structure on municipal land. This right may arise in the context of the municipality providing housing or shelter to vulnerable persons, subject to Council approval and a proper agreement.

Requirements for personal servitudes: All personal servitudes must be registered by notarial deed in the Deeds Registry. They may only be granted with Council approval. The municipality must obtain legal advice before granting any personal servitude, and all such servitudes must include clear termination provisions.

10.5 Notarial Ties (Notarial Deed of Tie)

A notarial tie is a registered notarial deed that binds two or more separately owned or registered properties together so that they may not be dealt with independently - they must be sold, transferred, mortgaged, or otherwise encumbered together. In municipal practice, notarial ties are relevant in the following circumstances:

- Where a developer acquires adjoining erven from the municipality and the municipality requires that the erven be developed as an integrated scheme and may not be subdivided or sold off separately;
- Where the municipality grants land at a reduced price or by donation on condition that it forms part of a larger integrated development that must remain intact;
- Where infrastructure funded by the municipality straddles multiple erven and the municipality requires that the erven remain tied together to protect the infrastructure investment; or
- Where a building spans a common boundary between erven and the municipality requires that the erven be tied together for structural integrity and title purposes.

A notarial tie must be registered by notarial deed in the Deeds Registry in accordance with the Deeds Registries Act. The deed must describe the properties to be tied and the conditions of the tie. Legal Services must review all notarial ties. A notarial tie may only be cancelled with the written consent of the municipality and any mortgagee, and must be approved by Council.

10.6 Servitudes for Municipal Infrastructure (Services Servitudes)

The municipality regularly grants and acquires servitudes for the installation and maintenance of municipal engineering infrastructure, including:

- Water and sewer pipelines and associated manholes and chambers;
- Electricity reticulation cables, substations, and transformer areas;
- Stormwater pipes, culverts, channels, and retention ponds;
- Fibre optic and telecommunications cables;
- Gas pipelines (where applicable);
- Roads and access servitudes; and
- Any other infrastructure serviced through the Public Road Reserve or across private land.

Relationship with the Wayleave Policy : Where engineering services infrastructure is to be installed or maintained within the Public Road Reserve (PRR), a wayleave must be obtained from the Wayleave Officer (Roads and Stormwater Section) in accordance with the Wayleave Policy . A wayleave is permission to work at a specified time in a specified area of the PRR and does not in itself constitute a registered servitude over private land. Where infrastructure must cross or be placed on privately owned land, a formal registered servitude is required in addition to any wayleave.

No work in the PRR or on privately owned land for municipal infrastructure purposes may commence without the applicable wayleave and/or registered servitude. Service agencies and third parties installing services within the PRR must comply with all requirements of the Wayleave Policy, including the submission of design drawings, undertaking/indemnity forms, traffic control plans, and payment of applicable fees and holding deposits.

Requirements for infrastructure servitudes: All servitudes for municipal infrastructure across private land must be registered by notarial deed in the Deeds Registry. Compensation to the affected landowner must be agreed or determined by a court. As-built drawings must be submitted to the Wayleave Officer on completion and the GIS system must be updated. Servitudes must include a maintenance access right allowing the municipality or its contractors to enter the servient land for the purpose of maintaining and repairing the infrastructure.

10.7 Rights of Way

A right of way is a specific type of servitude or contractual right entitling the holder to pass across another's land. The municipality may grant rights of way over municipal land for:

- Pedestrian access routes across municipal open spaces or road reserves;

- Vehicular access routes across municipal land to land-locked or poorly accessible properties;
- Public access ways in terms of town planning conditions; and
- Emergency access routes for fire, ambulance, and other emergency vehicles.

Rights of way that constitute real rights must be registered by notarial deed. Contractual rights of way (personal permissions not creating real rights) must be documented in a written agreement. All rights of way over municipal land that create ongoing obligations must be recorded in the Land Register.

10.8 Temporary Permissions, Licences, and Wayleaves

The municipality may grant short-term revocable permissions and licences for the temporary use of municipal land or the PRR. These are personal, non-transferable rights that do not create real rights in land. They may be revoked by the municipality on reasonable notice. Common types include:

- Wayleaves - permission to work within the Public Road Reserve (regulated by the Wayleave Policy);
- Event permits - permission to use municipal open spaces or land for events, markets, sports activities, or public gatherings;
- Temporary structure permissions - permission to erect non-permanent structures on municipal land (e.g. site offices, containers, portable toilets) for a defined period;
- Encroachment licences - permission allowing a private structure, wall, or garden to encroach marginally onto municipal land; and
- Advertising structure permissions - permission to erect advertising boards, signage, or street furniture within the PRR or on municipal land, subject to the Outdoor Advertising By-law.

All temporary permissions must be documented in writing, specifying the permitted use, area, period, conditions, fees, reinstatement obligations, and the municipality's right of revocation. Encroachment licences and advertising permissions must be approved by the relevant HOD within delegated authority. Temporary permissions do not confer any right of permanent occupation or any claim to the land.

10.9 Long-Term Land Use Agreements and Concessions

Where the municipality enters into a long-term arrangement (exceeding 3 years) for the use of municipal land by a third party that does not take the form of a conventional lease or registered servitude - including concession agreements, public-private partnership land use arrangements, community development agreements, or management agreements, the following requirements apply:

- Council must approve the agreement by resolution;
- A public participation process must be conducted if the arrangement is for a period exceeding 10 years or involves land of significant community value;
- The agreement must be put out to competitive tender in accordance with the SCM Policy unless a legitimate SCM deviation applies;
- The CFO must confirm that the arrangement is financially advantageous to the municipality;
- Legal Services must review the agreement; and
- The agreement must include performance monitoring provisions, reporting obligations, and clear termination and reversion provisions.

10.10 Encroachments

Where an existing structure, fence, wall, or improvement on adjacent privately owned land encroaches onto municipal land, the municipality shall:

- Identify and record all known encroachments in the Land Register;
- Assess each encroachment and determine whether it is to be formalised (via lease, licence, or servitude), tolerated temporarily, or required to be removed;

- Where an encroachment is formalised, an encroachment agreement or licence must be concluded, specifying the area, conditions, annual licence fee, the municipality's right to require removal on notice, and the owner's obligation to restore the land on removal;
- Encroachments affecting the provision of municipal services or infrastructure must be removed by the encroaching owner at their cost;
- Longstanding encroachments that have given rise to potential prescriptive rights must be referred to Legal Services for advice before any action is taken; and
- No encroachment onto municipal land may be regularised by any means that would result in the permanent loss of municipal land without full compliance with the disposal provisions of this Policy.

10.11 Mineral and Prospecting Rights

Mineral and prospecting rights are regulated primarily by the Mineral and Petroleum Resources Development Act (MPRDA), 28 of 2002, and vest in the State. Where an application for a prospecting or mining right affects municipal land, the municipality shall:

- Be notified and given an opportunity to comment on all applications for prospecting or mining rights affecting municipal land, in terms of the MPRDA;
- Assess the impact of any proposed prospecting or mining activity on the municipality's ability to provide services, on existing and planned infrastructure, and on the community;
- Negotiate appropriate surface use agreements with the applicant to protect municipal infrastructure, access, and land use rights; and
- Seek legal advice on any MPRDA application that may materially affect municipal land or service delivery.

10.12 Rezoning, Subdivision, and Consolidation of Municipal Land

Any rezoning, subdivision, or consolidation of municipal land must comply with SPLUMA and applicable provincial planning legislation (Gauteng Planning and Development Act). The following applies:

- No rezoning of municipal land may be approved without the recommendation of HOD: Development and Planning and Council resolution;
- Subdivision or consolidation of municipal land to facilitate a disposal or the granting of land rights must comply with the disposal provisions of this Policy;
- All subdivision diagrams must be approved by the Surveyor-General and registered in the Deeds Registry; and
- Town planning applications affecting municipal land must be assessed for impact on service delivery, infrastructure, and the IDP before approval.

10.13 Cancellation and Lapsing of Land Rights

Land rights granted by the municipality may be cancelled or may lapse in the following circumstances:

- By agreement between the municipality and the holder of the right, subject to Council approval and registration of a notarial deed of cancellation where applicable;
- By expiry of the agreed period (for leases, personal servitudes, and temporary permissions);
- By death or dissolution of the holder (for personal servitudes and usufructs);
- By merger - where the municipality acquires ownership of the servient or dominant property and the right merges with ownership;
- By court order - following a dispute or breach of conditions; or
- By abandonment - formal renunciation by the holder, subject to registration of cancellation.

On cancellation of any registered land right, the Municipality must attend to the registration of the cancellation in the Deeds Registry. The Land Register and Asset Register must be updated immediately on cancellation.

10.14 Register of Land Rights

The municipality shall maintain, as part of the Land Register, a schedule of all land rights granted over or affecting municipal land, recording at minimum:

- The nature of the land right (lease, servitude, notarial tie, temporary permission, etc.);
- The property over which the right is granted;
- The identity of the holder of the right;
- The period for which the right is granted and the expiry date;
- The consideration or rental payable;
- The Deeds Registry reference number (where registered); and
- The date of last review and next scheduled review.

The Municipality shall review the Register of Land Rights annually and report to Council on any rights that are due to expire, any rights requiring renewal, and any identified encroachments or irregularities. All entries in the Register of Land Rights may only be amended under the written authority of the CFO, in accordance with the Fixed Asset Management Policy .

10.15 Subleases

10.15.1 General

A sublease arises where a lessee of municipal land grants a further right of occupation or use to a third party (the sublessee) in respect of the whole or part of the leased municipal land. Subleasing introduces a layer of occupancy that sits between the municipality and the ultimate user of the land, and therefore requires careful management to ensure that the municipality retains control, accountability, and the ability to enforce its own lease conditions throughout the chain of occupation.

No sublease of municipal land may be entered into without the prior written consent of the municipality. Any purported sublease concluded without such consent shall be void and of no effect as against the municipality, and shall constitute a material breach of the head lease entitling the municipality to cancel the head lease. The subletting restriction in every head lease shall expressly state this consequence.

10.15.2 When Subleasing May Be Permitted

The municipality may, in its discretion, consent to a sublease of municipal land in the following circumstances:

- The sublease is consistent with the permitted use under the head lease and the IDP and SDF;
- The sublessee has been identified through a transparent and justifiable process, and in appropriate cases through a competitive process aligned with the SCM Policy;
- The sublessor (head lessee) remains fully liable to the municipality for all obligations under the head lease, including payment of rental, compliance with conditions of use, and maintenance;
- The sublessee is not a person who has been restricted from doing business with the municipality, is not in arrears on any municipal account, and is not subject to any conflict of interest;
- The rental or consideration to be received by the sublessor under the sublease does not exceed the market rental for the property, unless the excess has been disclosed to and approved by the municipality (see section 10.15.5 below on profit subleasing); and
- The sublease period does not extend beyond the remaining term of the head lease.

10.15.3 Application for Consent to Sublease

A lessee seeking the municipality's consent to sublease must submit a written application to the Municipal Manager containing:

- Full details of the proposed sublessee, including proof of legal status, tax compliance, and absence of conflicts of interest;
- A description of the area to be subleased and the proposed period of the sublease;

- The proposed rental or consideration to be paid by the sublessee, and how it compares to market rental;
- The proposed permitted use under the sublease, and confirmation that it is consistent with the head lease;
- A draft sublease agreement for the municipality's review; and
- Any other information the municipality may reasonably require.

The relevant HOD shall assess the application and make a recommendation to the Municipal Manager, who may approve or refuse consent within the parameters of their delegated authority. Applications where the sublease period exceeds two years, or where the municipality determines that the application raises policy considerations, must be referred to Council for approval.

10.15.4 Conditions of Consent

Where the municipality consents to a sublease, the following conditions shall apply as a minimum and must be incorporated into the written consent and the sublease agreement:

- The sublessor remains fully and primarily liable to the municipality for all obligations under the head lease. The municipality need not first proceed against the sublessee before enforcing its rights against the sublessor;
- The sublessee must comply with all conditions of the head lease that are applicable to occupation and use of the land, including the permitted use, maintenance obligations, and compliance with all applicable legislation and by-laws;
- The sublease must contain a condition that it is subject to and may not override the terms of the head lease. In any conflict between the sublease and the head lease, the head lease prevails;
- The sublease must terminate automatically and simultaneously with the head lease, for whatever reason the head lease terminates. The sublessee acquires no right of occupation against the municipality beyond the term of the head lease;
- No further subletting or cession of the sublease is permitted without the prior written consent of the municipality;
- No permanent improvements may be made to the subleased land without the prior written consent of both the municipality and, if required by the head lease, any other relevant authority;
- The sublessee must be responsible for all rates, taxes, and service charges applicable to the subleased portion, unless otherwise agreed in writing with the municipality;
- The municipality reserves the right to inspect the subleased land at any time on reasonable notice, and to enforce compliance with all conditions directly against the sublessee;
- The municipality's consent to the sublease does not constitute the municipality's acceptance of the sublessee as a direct lessee, nor does it create any direct lease relationship between the municipality and the sublessee; and
- Any amendment to the sublease requires the prior written consent of the municipality.

10.15.5 Profit Subleasing

Profit subleasing arises where the sublessor charges the sublessee a rental or consideration in excess of what the sublessor itself pays to the municipality under the head lease, thereby generating a profit from the municipality's land without the municipality sharing in that benefit. The municipality regards uncontrolled profit subleasing as contrary to the public interest and inconsistent with the requirement to obtain fair market value from public land.

Where a lessee seeks consent to sublease at a rental exceeding the head lease rental, the municipality shall:

- Require the lessee to fully disclose the proposed sublease rental and justify the differential;
- Obtain an independent market rental valuation of the subleased portion;
- Determine whether the head lease rental should be renegotiated upwards to reflect the true market rental before consenting to the sublease;
- Consider whether the profit differential constitutes a benefit that should accrue to the municipality rather than the lessee; and

- Where appropriate, require the lessee to pay the municipality a profit-sharing rental or an increased head lease rental as a condition of consent.

The municipality shall not consent to a profit sublease arrangement that effectively allows a private party to exploit municipal land for commercial gain that should properly accrue to the public.

10.15.6 Sublease Agreement Requirements

All subleases of municipal land must be in writing and must, in addition to the conditions of consent set out above, include at minimum:

- Full identification of the sublessor, sublessee, the municipal land being subleased, and the head lease reference;
- The precise area subleased, with a plan or sketch if the sublease covers only part of the leased land;
- The period of the sublease and the commencement date;
- The rental or consideration payable by the sublessee, the payment date, and escalation provisions;
- The permitted use;
- The sublessee's maintenance obligations;
- Provisions dealing with improvements and ownership of improvements;
- A clear statement that the sublease is subject to the head lease and terminates automatically with the head lease;
- No subletting without consent clause;
- Cancellation provisions and remedies on breach;
- The municipality's inspection and enforcement rights; and
- A clause acknowledging that the municipality has given its written consent to the sublease and that a copy of the consent is attached.

Legal Services must review all sublease agreements before signature. A copy of every executed sublease agreement must be lodged with the relevant HOD and the CFO and must be recorded in the Register of Land Rights.

10.15.7 Monitoring and Compliance

The municipality shall actively monitor all subleases of municipal land to ensure compliance with the head lease, the sublease agreement, and the conditions of consent. The following monitoring obligations apply:

- The relevant HOD shall maintain a register of all consented subleases, cross-referenced to the head lease register;
- Annual compliance inspections shall be conducted on all subleased properties;
- The sublessor shall submit an annual report to the municipality confirming continued compliance with the sublease conditions, the identity and contact details of all current sublessees, and confirmation that no further subletting has occurred without consent;
- Any breach by the sublessee of the conditions of the head lease or the sublease agreement must be reported by the sublessor to the municipality within 14 days of the breach coming to the sublessor's attention; and
- Where a breach is not remedied within the period specified in the notice, the municipality may enforce its rights directly against the sublessor under the head lease, including cancellation of the head lease.

10.15.8 Unlawful Subleasing and Consequences

Where it is discovered that a lessee has subleased municipal land without the municipality's prior written consent, the municipality shall:

- Issue a written notice to the lessee demanding immediate termination of the unlawful sublease and vacation of the sublessee within a reasonable period specified in the notice;
- Treat the unlawful sublease as a material breach of the head lease entitling the municipality to cancel the head lease on notice;

- Take all legal steps necessary to recover possession of the municipal land from both the lessee and any unlawful sublessee, including eviction proceedings in terms of the PIE Act where applicable;
- Recover from the lessee any profit earned from the unlawful sublease, as damages for the breach; and
- Report the matter to the Municipal Manager and Council as part of the quarterly land report.

The municipality will not give retrospective consent to an unlawful sublease. Any regularisation of unlawful occupation arising from an unauthorised sublease must follow the processes for authorised occupation set out in this Policy and the municipality's relevant housing and land policies.

11. EXEMPTIONS FROM NORMAL DISPOSAL AND ACQUISITION PROCESSES

11.1 Overview

This section sets out the circumstances in which the municipality may depart from the normal competitive disposal, acquisition, or SCM processes prescribed by this Policy and the MFMA. Exemptions are exceptional and must be strictly interpreted. They do not exempt the municipality from its broader obligations of accountability, transparency, and sound financial management. Every exemption must be properly documented, authorised at the correct level, and reported to Council.

11.2 MFMA Exemptions: Exempted Capital Asset Transfers (Sections 14(6) and 90(6))

In terms of sections 14(6) and 90(6) of the MFMA and Regulation 20 of the ATR, transfers of municipal land to another organ of state in the following circumstances are classified as exempted transfers and are exempt from the full public participation and competitive SCM requirements that apply to non-exempted disposals:

- A review by the municipality of its service delivery mechanisms in terms of Chapter 8 of the MSA and the subsequent appointment of an organ of state to perform the relevant service;
- A reorganisation of powers and functions between the municipality and its municipal entity;
- An assignment of any of the municipality's powers and functions to another organ of state by national legislation;
- The transfer of municipal housing or land to a national or provincial organ of state for housing for the poor in terms of national or provincial housing policy;
- A transfer required or permitted in terms of national legislation where that legislation determines the conditions of transfer; or
- Any other circumstance where Council has resolved that the land is not needed to provide a minimum level of basic municipal service and is surplus to requirements, and the transfer is to another organ of state.

Important limitations: An exempted transfer classification does not exempt the municipality from the obligation to obtain an independent valuation, to conclude a written transfer agreement complying with ATR Regulations 17, 24, 30, and 32 (as set out in Section 6 of this Policy), or from the CFO's obligation to update the Asset Register and Land Register. The CFO must confirm the exemption classification in writing before any exempted transfer proceeds. Exemptions are not available for transfers to private parties.

11.3 SCM Deviations from Competitive Procurement Processes

The municipality may depart from the normal competitive bidding and tender process for land transactions in the following circumstances, in accordance with Section 36 of the Supply Chain Management Policy and Section 36 of the SCM Regulations:

11.3.1 Emergency

Where the acquisition of land is urgently required to prevent or address an emergency situation that poses a risk to public health, safety, or service delivery continuity, the AO may approve a deviation from normal competitive processes. Emergencies arising from poor planning do not qualify. The emergency must be genuine, and the deviation must be the minimum necessary to address the emergency. The reasons must be recorded and reported to the next Council meeting.

11.3.2 Single Source or Sole Provider

Where the land to be acquired or the service offered in connection with the land transaction is only available from a single identified source - for example, where only one parcel of land can serve the required purpose due to its unique location, servitude alignment, or infrastructure constraints - the AO may approve a negotiated transaction. The AO must document the basis for the single-source determination and obtain an independent valuation to confirm fair market value before proceeding.

11.3.3 Special Works of Art or Heritage Objects

Where the municipality seeks to acquire land, a structure, or object of heritage, cultural, or artistic significance for which specifications are impossible or impractical to compile in a competitive tender, the AO may approve a direct negotiated acquisition. A heritage or cultural assessment must accompany the motivation.

11.3.4 Any Other Exceptional Circumstances

In any other exceptional case where it is genuinely impractical or impossible to follow the normal competitive process, the AO may approve a deviation. The motivation must clearly establish why the normal process cannot be followed, and the CFO must confirm in writing that there are no financial risks associated with the deviation. The deviation must be pre-approved in principle by the CFO before it is actioned.

11.3.5 Process Requirements for All SCM Deviations

Regardless of the ground for deviation, the following requirements apply to all SCM deviations in connection with land transactions:

- Pre-approval must be obtained in principle from the CFO before the deviation is actioned;
- All documentation must be submitted to the SCM Unit - in the case of an emergency deviation, no later than three working days after the incident;
- The AO must record full written reasons for the deviation;
- The deviation must be reported to the next Council meeting and included as a note to the Annual Financial Statements;
- All parties to a deviation must be fully compliant on the Central Supplier Database (CSD) at the time of the deviation; and
- A deviation does not exempt the municipality from obtaining an independent valuation, concluding a written agreement, or updating the Land Register.

11.4 Exemptions from Public Participation

The municipality is not required to conduct a formal public participation process in the following circumstances, provided all other requirements of this Policy and the MFMA are met:

- Where the combined value of all land assets to be disposed of in the financial year does not exceed five percent (5%) of the total value of the municipality's capital assets and no individual asset is a high-value asset in which case the Council meeting open to the public serves as the public participation forum;
- Where the transfer is an exempted transfer to another organ of state in terms of sections 14(6) or 90(6) of the MFMA and Regulation 20 of the ATR (other than sub-regulation (f));
- Where the transfer arises from national legislation that initiates the transfer (Regulation 20(1)(c)) in which case public participation is not required as the legislative process itself constitutes the public mandate;
- Where the land right being granted is a temporary permission, wayleave, or short-term licence not exceeding two years; or
- Where Council, by resolution, determines that a public participation process is not warranted in the particular circumstances, and records its reasons.

The above exemptions from formal public participation do not exempt the municipality from holding the Council meeting open to the public that is required by section 14(2) of the MFMA before any disposal decision is taken.

11.5 Exemptions from Rates: Investment Property and Public Service Infrastructure

In terms of the Municipal Property Rates Act (MPRA), 6 of 2004, certain categories of municipal land are exempt from property rates, including:

- Land used for public service infrastructure as defined in the MPRA;
- Land owned by a municipality and used for municipal purposes;
- Land registered in the name of and used by public benefit organisations for specific approved public benefit activities; and
- Any other category declared exempt by the Minister by notice in the Government Gazette.

Where the municipality disposes of or grants land rights over land currently benefiting from a rates exemption, the CFO must assess the rates implications of the transaction for both the municipality and the incoming owner or rights holder, and advise Council accordingly. The loss of a rates exemption is a material financial consideration that must be included in the information statement submitted to Council.

11.6 Other Statutory Exemptions

The municipality must also be aware of the following additional statutory exemptions that may apply to specific land transactions:

- Transfers of land under the Restitution of Land Rights Act, 22 of 1994, or following a court order in terms of that Act, are governed by the restitution legislation and may not be subject to the full disposal process in this Policy.
- Transfers of land in terms of an approved housing project under the Housing Act, 107 of 1997, and associated housing programmes are subject to the conditions of those programmes and may have specific exemptions from normal SCM processes, subject to the CFO's written confirmation;
- Transfers to land reform beneficiaries in terms of the Extension of Security of Tenure Act (ESTA) or Land Reform (Labour Tenants) Act may be directed by a court order and will not be subject to normal competitive disposal processes; and
- Any other exemption created by specific national legislation must be confirmed in writing before it is relied upon.

11.7 No General Exemption for Political or Administrative Convenience

For the avoidance of doubt, no land transaction may be exempted from this Policy or from the requirements of the MFMA on the basis of political expediency, administrative convenience, prior agreements or understandings reached outside of the processes prescribed by this Policy, or any instruction from a councillor or official that does not comply with this Policy. Any attempt to bypass this Policy on such grounds shall be treated as potential financial misconduct and referred to the AO and, where appropriate, to the relevant authorities.

12. UNSOLICITED BIDS FOR MUNICIPAL LAND

12.1 General

An unsolicited bid in the context of this Policy is any approach, proposal, or offer made by a private party to the municipality without the municipality having

- issued a tender,
- request for proposals, or any other invitation to bid
- in which the party offers to purchase, lease, develop, or otherwise transact in respect of municipal land, or proposes a land related arrangement from which that party would benefit.

The municipality's primary response to any unsolicited bid for land must be caution and strict process compliance. In accordance with section 113 of the MFMA, there is no obligation on the municipality to consider any unsolicited bid. The right to consider an unsolicited bid is a discretionary exception, not a right of the bidder.

12.2 Initial Receipt and Routing

Any official, councillor, or other person who receives an unsolicited bid for municipal land whether by letter, email, verbal communication, presentation, or any other means must:

- Not make any commitment, representation, or statement of intent to the bidder regarding the municipality's likely response;
- Immediately refer the unsolicited bid in writing to the Municipal Manager;
- Not share the bid with any other official or councillor except the Municipal Manager; and
- Record the receipt of the bid and the referral in writing within two working days.

Any commitment or representation made to an unsolicited bidder outside of the formal process set out in this section is of no legal effect and does not bind the municipality. Officials or councillors who make such representations may be subject to disciplinary action.

12.3 Preliminary Assessment by the Municipal Manager

On receipt of an unsolicited bid for land, the Municipal Manager shall conduct or delegate an official to conduct a preliminary assessment to determine whether there is any basis to consider the bid at all. The preliminary assessment must address:

- Whether the land to which the bid relates is municipal land and is correctly identified;
- Whether the land is classified as surplus to the municipality's requirements (and if not, whether it could properly be considered for disposal);
- Whether the proposed transaction is aligned with the IDP and SDF;
- Whether the bidder has any actual or potential conflict of interest with the municipality;
- Whether the bidder is compliant on the CSD and has no outstanding municipal accounts;
- Whether the proposal could qualify as a unique innovative concept, an exceptional benefit, or a sole provider situation under section 113(2) of the MFMA and if not, whether there is any other lawful basis to consider the bid outside of a competitive process; and
- Whether the bid has been submitted in a form that discloses the full identity and interest of all parties behind the bid, including any fronting or intermediary arrangements.

If the preliminary assessment reveals that the land is not surplus, that the transaction is not aligned with the IDP, that the bidder has a conflict of interest, or that none of the section 113(2) criteria are met and no other exemption applies, the Municipal Manager shall decline the bid in writing and notify the bidder accordingly. No further consideration is required.

12.4 Decision to Consider an Unsolicited Bid (MFMA Section 113(2))

The AO may only decide to consider an unsolicited bid for land if all four of the following criteria in section 113(2) of the MFMA and Section 37.2 of the Supply Chain Management Policy are met:

- The proposal offered is a demonstrably or proven unique innovative concept; meaning it is genuinely novel and not simply a commercial offer to buy or lease land that any other party could equally make.
- The proposal will be exceptionally beneficial to the municipality or will have exceptional cost advantages; not merely beneficial, but exceptionally so in comparison with what a competitive process would yield.
- The person who made the bid is the sole provider of the specific product, service, or capability proposed; meaning no competitive process could yield an equivalent outcome; and
- The reasons for not going through the normal competitive process are sound and documented.

All four criteria must be satisfied simultaneously. The satisfaction of one or two criteria is not sufficient. Where the unsolicited bid is, in substance, simply an offer to purchase or lease municipal land at a price the bidder finds attractive, section 113(2) criteria will not be met and the bid must be declined and the land must be made available through a competitive process if the municipality wishes to proceed with a disposal.

The AO's decision to consider an unsolicited bid must be in writing, must set out reasons addressing each of the four criteria, and must be confirmed by the CFO. The decision must be reported to the next Council meeting.

12.5 Public Disclosure and Invitation for Comment

If the AO decides to consider an unsolicited bid that satisfies the section 113(2) criteria, the decision and the unsolicited bid (to the extent not commercially sensitive) must be made public in accordance with section 21A of the MSA and Section 37.3 of the Supply Chain Management Policy, together with:

- The reasons why the bid should not be open to other competitors;
- An explanation of the potential benefits if the bid were accepted; and
- An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

The AO must submit all written comments received from the public - including any responses from the unsolicited bidder to both National Treasury and the Gauteng Provincial Treasury for comment, in terms of Section 37.4 of the Supply Chain Management Policy.

12.6 Consideration by the Bid Adjudication Committee

The bid adjudication committee must consider the unsolicited bid. The meeting must be open to the public (Section 37.6 of the SCM Policy). In considering the bid, the committee must take into account:

- Any public comments submitted; and
- Any written comments and recommendations of National Treasury or the Gauteng Provincial Treasury.

If any recommendations of National Treasury or Provincial Treasury are rejected or not followed, the AO must submit written reasons to the Auditor-General, National Treasury, and Gauteng Provincial Treasury within seven days of the decision. No contract may be entered into or signed within 30 days of that submission (Section 37.8–37.9 of the SCM Policy).

12.7 Unsolicited Bids That Should Be Converted to a Competitive Process

Where the municipality receives an unsolicited bid for land that does not meet the section 113(2) criteria but reveals a genuine community need or development opportunity, the municipality should not simply decline the bid and ignore the opportunity. Instead, the municipality shall:

- Assess whether the land is surplus and whether it should be made available for disposal or development through a proper competitive process;
- If appropriate, initiate the surplus land identification process under Section 6.2 of this Policy;
- Design a competitive tender or request for proposals that captures the opportunity identified in the unsolicited bid without giving the original bidder any information advantage; and
- Not share or use the original bidder's proprietary or confidential technical or financial information in the competitive tender documents without that bidder's consent.

The original unsolicited bidder may participate in the subsequent competitive process on equal terms with all other bidders, but receives no preference, and no information advantage as a result of having submitted the original unsolicited bid.

12.8 Safeguards Against Manipulation

The municipality recognises that unsolicited bids are a common vehicle for corruption, collusion, and the circumvention of competitive processes in land transactions. The following safeguards apply to all unsolicited bids for land:

- No unsolicited bid may be considered by any official or committee without the prior written referral to and assessment by the Municipal Manager as required by Section 12.3;
- No official or councillor may negotiate, agree in principle, or make any representation to an unsolicited bidder outside of the formal process in this section;
- All unsolicited bids, and all steps taken in response to them, must be recorded in a dedicated Unsolicited Bids Register maintained by the Municipal Manager or his/her delegated official;
- The Unsolicited Bids Register must be open to inspection by the Internal Audit Unit and the Audit Committee;
- Any unsolicited bid submitted by a person who has had prior communication with an official or councillor about the land in question must be investigated for potential conflict of interest before any further steps are taken;
- The AO must report all unsolicited bids received in the financial year, whether considered or declined, to Council in the annual report; and
- Any official or councillor who facilitates or participates in the consideration of an unsolicited bid in contravention of this Policy shall be subject to disciplinary action and referral to appropriate authorities.

13. PUBLIC PARTICIPATION AND COMMUNITY ENGAGEMENT

13.1 When Public Participation Is Required

Public participation in respect of land disposal transactions is required in the following circumstances:

- Where the combined value of capital assets (including land) proposed for disposal in a financial year exceeds five percent (5%) of the total value of the municipality's capital assets, as per its latest audited financial statements;
- Where any individual land asset is classified as a high-value asset;
- Where the disposal involves public open space, parks, or recreational land;
- Where the proposed disposal has been identified in the IDP as a matter requiring community input;
- Where the disposal involves land in a historically sensitive area or an area with historical land rights implications; or
- Where Council, in its discretion, determines that community engagement would be in the public interest.

13.2 Minimum Requirements for Public Participation

Where public participation is required, the following minimum requirements must be met:

- A written information statement must be prepared setting out
  - the description and value of the land, the proposed method of disposal, the reasons for the disposal, and the anticipated benefits and losses;
  - The information statement must be made available at the municipal offices and on the municipal website for at least 30 days (or 60 days for high-value assets);
- Notice must be published in at least one local newspaper and on the municipal website;
- Affected communities and residents must be invited to submit written comments and representations;
- At least one public meeting must be held in the area affected by the disposal; and
- All submissions received must be considered and responded to in the Council report.

14. MFMA COMPLIANCE AND FINANCIAL MANAGEMENT

14.1 Budgeting Requirements

All anticipated land disposals and the proceeds thereof must be reflected in the municipal budget and MTREF. No disposal may proceed in a financial year unless it has been included in the approved budget.

14.2 Proceeds of Land Disposals and Borrowings (ATR Regulation 16)

The proceeds from the sale or disposal of municipal land shall be dealt with as follows:

- Proceeds must in the first instance be used to discharge any borrowings associated with the disposed land, at the redemption date of those borrowings or at another date agreed with the lender. Alternatively, the municipality may negotiate with the acquiring party to take over any associated borrowings as part of the compensation arrangement, subject to the lender's agreement. This ensures that the municipality does not continue to service debt for land it no longer owns;
- Any remaining proceeds after discharge of associated borrowings shall be deposited into the municipal Capital Replacement Reserve or such other reserve as determined by Council on the advice of the CFO;
- Proceeds shall not be used to fund operating expenditure unless Council has passed a special resolution approving such use and the CFO has confirmed that there are no financial risks associated with such use; and
- The CFO shall report to Council on the utilisation of land disposal proceeds within 30 days of receipt of proceeds.

14.3 National Treasury Notifications

The Municipality shall notify and consult with National Treasury as required by the MFMA and ATR, including:

- Requesting views on high-value asset disposals;
- Reporting on concluded disposals in terms of the municipal annual report; and
- Seeking guidance on any novel or complex land transactions.

14.4 Reporting

The Municipal Manager shall report to Council on all land disposals on a quarterly basis and in the annual report. The report shall include:

- A list of all land disposals concluded or in progress;
- The proceeds or consideration received;
- The application of proceeds;
- Any deviations from this Policy and the reasons therefor; and
- The updated municipal land register.

15. MUNICIPAL LAND REGISTER

The municipality shall maintain a comprehensive and up-to-date Land Register of all land owned by or vested in the municipality. The Land Register shall be maintained by the HOD: Development and Planning in consultation with the CFO, and shall record as a minimum:

- The erf or farm number, extent, and physical description of each property;
- The registered owner (if different from the municipality);
- The current zoning and land use;
- The category of land (as defined in Section 5 of this Policy);
- The current fair market value or last valuation;
- Any land rights granted over the property (leases, servitudes, etc.);
- Any conditions of title or restrictions;
- Current occupation status;
- Any borrowings associated with the land; and
- Historical disposal transactions.

In accordance with the Fixed Asset Management Policy and section 63 of the MFMA, the CFO is the principal custodian of the municipality's Asset Register and bears sole authority over it. The Land Register shall be treated as an integral part of the municipal Asset Register for all accounting and reporting purposes.

The Land Register shall be reconciled with the municipal Asset Register on a quarterly basis. Any discrepancies shall be investigated and resolved within 30 days. The Land Register shall be made available for inspection by Council members and the public, subject to any applicable confidentiality provisions.

16. UNAUTHORISED OCCUPATION OF MUNICIPAL LAND

The municipality shall take active measures to prevent and address unauthorised occupation of municipal land. The following principles shall apply:

- No person may occupy or use municipal land without the written authorisation of the municipality;
- The municipality shall conduct regular inspections of its land and take prompt action to address unauthorised occupation;
- Eviction of unauthorised occupants shall be conducted strictly in accordance with the Prevention of Illegal Eviction Act (PIE Act) and any applicable court orders;
- Where unauthorised occupants have been residing on municipal land for an extended period or have made significant improvements, the municipality shall conduct a socio-economic assessment before proceeding with eviction;
- Where appropriate, the municipality may consider formalising occupation through lease agreements or, in the context of housing programmes, through proper housing allocation processes; and
- The municipality shall provide alternative accommodation or sites to vulnerable unauthorised occupants where required by law and as far as it is reasonably practicable.

17. GOVERNANCE, AUTHORISATION AND DELEGATIONS

17.1 Council Authority

Council retains the following exclusive authority which may not be delegated:

- Approval of all land disposals, including donations and transfers of municipal land;
- Adoption of resolutions confirming that land is not required for minimum service delivery;
- Authorisation of public participation processes for high-value land assets;
- Approval of land exchanges and negotiated sales;
- Approval of donations of municipal land; and
- Amendment of this Policy.

17.2 Councillor Exclusions from Disposal Processes (MFMA Section 117)

In terms of section 117 of the MFMA, no councillor of the municipality may be a member of a Municipal Bid Committee or any other committee evaluating or approving tenders, quotations, contracts, or other bids in connection with any land disposal process, nor may any councillor attend any such meeting as an observer. Council's role in the land disposal process is limited to oversight to ensure that Council policy is implemented and does not extend to participation in the SCM bid committee process. Any councillor who contravenes this provision shall be subject to appropriate action in terms of applicable legislation.

17.3 Delegations

Other powers and functions in connection with land transactions may be delegated in terms of the Delegation of Powers Policy, including but not limited to:

- The administrative processing of lease renewals within approved parameters;
- The granting of revocable temporary permissions and licences for use of municipal land;
- The commissioning of valuations and professional reports; and
- The preparation and submission of reports to Council.

All delegations must comply with section 59 of the MSA and be reflected in the municipality's current Delegation of Powers register.

17.4 Role of Key Officials

Municipal Manager (AO)	Overall accountability for compliance with this Policy; preparation of Council reports; oversight of land register; reporting to Council on all land transactions
CFO	Financial oversight of all land transactions; sole authority over amendments to the municipal asset register (no amendments, deletions or additions may be made to the land/asset register except by or under written support of the CFO); MFMA compliance; budgeting of proceeds; valuation oversight; National Treasury liaison; annual disclosure to National Treasury of all sponsorships/donations per SCM Reg 48
HOD: Development and Planning	Identification of surplus land; day-to-day maintenance of land register in consultation with CFO; preparation of assessment reports; servitude and lease administration; zoning and town planning requirements
HOD: Corporate Services	Legal opinions on land transactions; review of deed of donation, sale agreements, and exempted transfer agreements; conveyancing oversight; due diligence support

Relevant HOD	Community participation processes; ward committee engagement; public meeting facilitation
SCM Unit	Competitive letting and tender processes; bid committee functions; acceptance of Council-resolved disposal requests with documentation not older than 12 months

18. CONFLICT OF INTEREST

Any official, councillor, or other person involved in a land disposal transaction who has a direct or indirect personal or financial interest in the outcome of the transaction must immediately disclose such interest to the Municipal Manager or Council Speaker respectively, and must recuse themselves from all further involvement in that transaction.

The principles of the Supply Chain Management Policy relating to ethics and conflicts of interest apply equally to all land transactions. Any person found to have failed to disclose a conflict of interest in a land transaction will be subject to disciplinary action in accordance with applicable legislation and the municipality's disciplinary code.

19. RELATIONSHIP WITH OTHER POLICIES

This Policy must be read in conjunction with the following adopted policies of Midvaal Local Municipality:

- Delegation of Powers Policy;
- Supply Chain Management Policy ;
- Disposal of Assets Policy;
- Policy on the Acceptance of Grants, Donations, Sponsorships and Gifts ;
- Property Rates Policy ;
- Fixed Asset Management Policy ;
- Budget Funding and Reserves Policy ;
- Credit Control and Debt Collection Policy ;
- Tariff Policy ; and
- Indigent Policy .

In the event of any conflict between this Policy and any of the above policies, this Policy shall prevail in respect of land related transactions. In the event of conflict between this Policy and applicable legislation, legislation shall prevail.

20. APPROVAL, EFFECTIVE DATE AND AMENDMENT

20.1 Approval and Effective Date

This Policy was adopted by Council by resolution on ______________________________. It comes into effect on 1 July 2026 and replaces any previous policy dealing with the disposal of municipal land or the granting of land rights.

20.2 Policy Review

This Policy shall remain in force until amended or replaced by Council. The Municipality shall review this Policy whenever changing circumstances require, including changes in applicable legislation, shifts in the Municipality's land portfolio, or significant developments in municipal finance management practice. Any amendment to this Policy requires a Council resolution.

20.3 Amendment

Changes to this Policy are only effective if approved by Council by resolution. Material amendments to the Policy may require a public comment process as determined by Council.

21. REFERENCES

The following references were observed in compiling this Policy:

- Constitution of the Republic of South Africa, 1996
- Local Government: Municipal Finance Management Act, 56 of 2003
- Municipal Asset Transfer Regulations, Government Gazette No. 31346, 2008
- Local Government: Municipal Systems Act, 32 of 2000
- Spatial Planning and Land Use Management Act, 16 of 2013
- Local Government: Municipal Property Rates Act, 6 of 2004
- Deeds Registries Act, 47 of 1937
- Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 19 of 1998
- Gauteng Planning and Development Act, 3 of 2003
- National Heritage Resources Act, 25 of 1999
- National Environmental Management Act, 107 of 1998
- National Treasury: Guide to the Municipal Asset Transfer Regulations, 2008
- National Treasury: Supply Chain Management Regulations, 2005
- National Treasury: MFMA Circulars (relevant circulars on asset management and disposal)
- SALGA: Guideline on Municipal Land Management
- Midvaal Local Municipality: Disposal of Assets Policy
- Midvaal Local Municipality: Wayleave Policy
- Alienation of Land Act, 68 of 1981
- Mineral and Petroleum Resources Development Act, 28 of 2002
- Expropriation Act, 13 of 2024
- Midvaal Local Municipality: Supply Chain Management Policy
- Midvaal Local Municipality: Policy on the Acceptance of Grants, Donations, Sponsorships and Gifts
- Midvaal Local Municipality: Property Rates Policy

22. ENFORCEMENT AND NON-COMPLIANCE

Any official or councillor who:

- Approves or participates in a land disposal in contravention of this Policy or applicable legislation;
- Fails to disclose a conflict of interest in a land transaction;
- Provides false or misleading information in connection with a land transaction; or
- Receives any benefit or inducement in connection with a land transaction;

shall be subject to:

- Disciplinary action in terms of the municipality's disciplinary code and applicable legislation;
- Recovery of any losses suffered by the municipality as a result of the non-compliance; and
- Referral to relevant authorities including the South African Police Service, National Treasury, and the Auditor-General, as may be appropriate.

Any land disposal conducted in contravention of this Policy or applicable legislation shall be void and of no effect, and the municipality shall take all steps necessary to reverse such a transaction, including approaching the High Court for appropriate relief.

23. ADOPTION AND SIGN-OFF