



WINNIE MADIKIZELA MANDELA  
LAND DISPOSAL POLICY

MAY 2022

# WINNIE MADIKIZELA MANDELA LAND DISPOSAL POLICY

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## 1 Definition of Terms

- Rights:** Authority to own land, ( land rights) entitlement to land by law.
- Servitude:** A right over a portion of a property for someone else or other people to use it for a specific purpose e.g. a power line servitude, a right of way servitude. This is normally surveyed and registered at the Deeds office.
- Land Alienation:** Demarcation of land or sub-divisioning of land for a specific purpose.
- Land Banking:** Keeping of land for a future use. Sparing it for maybe a strategic purpose in the future.
- Land Incapable of Development On Its Own right:** This would be a piece of land that is too small for any structure to be constructed on it or too sloppy or unserviceable, whatever the reason may be this would be land that not possible to develop without consolidating (combining) it with an abutting property.
- Land Capable of Development on its Own Right:** This is a piece of land that can be developed without having to consolidate it with another land.
- Private Treaty:** A formal agreement between two parties or persons. The transaction will be between the Municipality and the next person without opening it to the public to contest.
- Abutting:** Adjoining, Adjacent, sharing boundary.
- Market Value:** Price or value of the property derived from the prevailing prices of other properties in the same area as the property in question.
- Freehold Title:** Complete ownership of a property for life, or until one decides to sell it.
- Rezoning:** Changing the permitted use of a property to another use by applying through the Municipality.
- Housing Beneficiary Waiting List:** The waiting list compiled by the Municipality for the purposes of allocating houses to people who qualify according to the National Housing Code.

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**Bulk land:** Large piece of land that can be used for a large development or housing development.

**Lease Agreement:** A contract entered into between the Municipality and a person (juristic or natural) for the use or enjoyment of some of the rights on that land for a specified period and under such terms as may be stipulated in the contract.

**Commercial Land:** Land zoned for and permitted for use on commercial activities.

**Industrial land:** Land zoned for and permitted for use on industrial activities.

**Residential Land:** Land zoned for and permitted for use on residential activities.

**Multi-tenanted Premises:** Premises that are rented out to more than one person.

**Single –tenanted Premises:** Premises that are rented out one person.

**Social Sites:** Properties that are used for social purposes e.g. Churches, etc.

**Institutional Sites:** Properties that are used for Institutional purposes e.g. schools, etc.

**Sporting bodies:** Sport clubs or organizations.

**Municipality:** This refers to the Winnie Madikizela-Mandela Municipality

## **2 INTRODUCTION AND LEGISLATIVE BACKGROUND**

- a) A policy in respect of immovable property includes any right, interest or servitude therein or there over and must also take account of other legislation, policies and practices relating to land use, health, environment (both natural and built), safety, etc. The Municipality has a responsibility in terms of acquiring,

managing, developing and releasing its real estate holdings and rights on behalf of its residents and rate payers. The key consideration is that the best interest of the Municipality (and thus its residents) rather than individuals should be paramount in all real estate transactions that the Municipality enters into. This demands that, in all transactions that the Municipality enters into, there should be maximum benefit to the Municipality, its operational requirements and the broader community. The Municipality also has a core responsibility to acquire and avail land and buildings, in the first instance, for use by its Service Units and Departments for purposes of developing and maintaining municipal infrastructure, promoting service delivery and for facilitating social and economic development. The Municipality is also responsible to administer and maintain surplus land for future requirements (land banking).

Certain interventions are regularly necessary in land transactions perused by the Municipality as compared to those of the private land and the property market. As the private market is solely concerned with maximizing capital gains, as against the collective role of the Municipality in acting in the best interest of its citizens, it follows that the Municipality will not singularly follow the processes and values of that market. Moreover, because the historic accumulation of land and property is highly valued, this needs to be acknowledged in terms of future transactions. Land and buildings affect the Municipality's entire organization and straddles all Units and Committees of the Municipality. Therefore, land policy must act in support of sectorial policies such as economic development, environmental management, land use, housing, social and community infrastructure, physical infrastructure and culture and recreation.

- b) Market forces will always be the point of departure in any land or property transaction and this must therefore be recognized and

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acknowledged. The Municipality in subscribing to affirmative action must incorporate these principles within their real estate policy to redress inequitable practices of the past. This means that the Municipality must first give preferences to the local people (previously disadvantaged individuals or groups) with particular emphasis on women when dealing with issues related to disposal and transactions of land. This policy is also consistent with the legislation governing the management and disposal of public assets. It requires that any processes proposed in this policy for either leasing or disposing of property (land and buildings) must go through a public participation process and be transparent enough to the general public. This does not only ensure compliance to our national legislation but puts the Municipality a mile ahead in as far as good governance is concerned.

- c) This policy for the Municipality is informed by the legal and constitutional context within which the Municipality operates. Since, the Constitution is the supreme law of the land, for every decision taken by each sphere of government to be valid, it ultimately has to be consistent with the Constitution. Against this is the reality that land is affected by a plethora of legislation, of which the following are the most relevant to this policy.
  - 1. The Constitution Act 108 of 1996 – section 152(1)(a,c,e), this section deals with the objectives of local government. This then demands that this policy must propel the municipality towards attaining the following ideals as set out in the constitution.
    - o (a) to provide democratic and accountable government for local communities.
    - o (c) to promote social and economic development

- (e) to encourage the involvement of communities and community organizations in the matters of local government.
2. Municipal Systems Act (32/2000) – Section 83 and 84. These sections deal with competitive bidding and negotiation and agreement with service provider respectively, these spell out the requirements that need to be met in order for a bid to be regarded as competitive.
  3. Municipal Finance Management Act (MFMA) – Section 14. This section spells out the processes that need to be followed for any disposal of a municipal asset, be it movable or non movable. This section puts as a primary consideration when deciding on disposing of an asset its relevance to the provision of a basic Municipal service, and also the economic and community value to be gained in exchange for an asset. It says also that the decision to dispose of an asset is a Council decision and the processes of disposal must be fair, equitable, transparent, competitive and consistent with the Supply Chain Management Policy of the Municipality.

### **3 Strategic Goals and Vision of the Policy**

Land is an important and sensitive issue to all South Africans. It is a finite resource which binds all together in a common destiny. As a cornerstone for reconstruction and development, a land policy needs to deal effectively with:

- a) the injustices of racially based land dispossessions of the past;
- b) the need for a more equitable distribution of land ownership;
- c) the need for land reform to reduce poverty and contribute to economic growth;
- d) security of tenure for all; and

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- e) a system of land management which will support sustainable land use patterns and rapid land release for development.

Land policy should ensure accessible means of recording and registering rights in property, be consistent with the broad norms and guidelines for land use planning, effectively manage public land and develop a responsive, client-friendly land administration service.

Our vision in an urban context is of a policy that contributes to reconciliation, stability, growth and development in an equitable and sustainable way, where the poor have secure access to well located land for the provision of shelter. It presumes an active land market supported by an effective and accessible institutional framework.

## **4 Key Principles Underpinning The Policy**

A set of principles and values, which underpin the Municipality's policy has been critical in guiding the process of policy formulation as well as application.

This policy is therefore intended to:

- a) Deal with the processes of land disposal in an equitable, flexible and transparent manner enabling the efficient performance of appropriate land transactions to serve the diverse needs of the Municipality's Departments and the communities at large.
- b) Establish mechanisms for consulting with role players and coordinating land transactions.
- c) act in support of:
  - i. Development – land, economic, infrastructure and/or housing;
  - ii. Land use – a town planning scheme and land information system;



- iii. Community needs; and
- iv. Rates system.

## **5 Scope of policy**

The Municipality has got a duality of systems in as far as legislation governing land is concerned. Land is differentiated spatially into urban and rural land. According to this differentiation the Municipality has got title only to land in the urban precinct. It therefore follows that this policy is only meant to deal with the disposal of the land for which the Municipality has title, which would only be on urban land including the Municipal commonage land. Since this policy deals with land as a municipal asset, it shall be administered by the Department responsible for land administration whilst its implementation shall be administered by the Budget and Treasury Department (BTO).

## **6 Land Alienation**

For the purposes of this policy land shall be categorized into five categories which are:

- a. Residential Land.
- b. Commercial and Industrial Land.
- c. Social Sites (worship, crèches and Institutional),
- d. Land for Sporting Bodies.
- e. Land to other Government Spheres.

It would however be prudent to put up some general rules which all land transactions will have to adhere to, these are not meant to infringe on any ones rights but rather to safeguard the Council from possible loopholes. On cases where exclusions might be granted, it will be indicated here in this policy.

- i. A decision to release land shall be a decision by a full Council Meeting open to the public. { MFMA (14)(2) }

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- ii. Land valuer must be appointed by the municipality.
- iii. Land must be valuated on its potential zoning if that potential zoning will yield a better property value than the existing.
- iv. Market value prices must never be discounted unless otherwise stated here in this policy.
- v. Land reserved for public infrastructure or public amenities like the extension of a cemetery must never be disposed of. { MFMA (14)(1) }
- vi. Lease agreements should be categorized into:
  - a) Short term – up to five years
  - b) Medium Term- Six to 14 years
  - c) Long Term – 15 to 35 years
- vii. All lease agreements must not go beyond 35 years.
- viii. All lease agreements except for Short Term leases, must be liable for property rates.
- ix. Municipal officials and Municipal councillors must not be allowed to tender on any land transactions except for residential land (individual sites).{ MFMA (110)(1)(b) }{MSA (schedule 1(12) & schedule 2(9))}
- x. All Land Agreements should ensure that the intended use of the land is in line with the Municipality's Spatial Development Framework.
- xi. Subleasing should only happen where the lease agreement agrees.
- xii. All agreements should be terminated in cases where development clauses have not been met at the agreed date and there are no extension of such dates agreed upon.
- xiii. Where existing facilities are being taken over, will recognise the asset value of development already existing, whether this has been directly funded by the Municipality or not;

## **6.1 Residential Land.**

This land will be the land banked under the Housing Land Account, it refers to the land zoned or earmarked for residential purposes.

### **6.1.1 Land Incapable of Development on its Own:**

4. Will be advertised for objections by the public
5. Will be offered by private treaty to the respective abutting owner;
6. Will be priced at market value;
7. Will be offered in Freehold Title;
8. Each transaction will be subject to an un-refundable application fee of an amount as may be approved by the Municipality from time to time;
9. The purchaser will be responsible for any and all costs associated with the possible relocation of services, rezoning, valuation, survey, registration, transfer and any other cost not mentioned here but associated with the transaction.

The creation of free-standing lots will in each instance be the preference of the

Municipality in order for new residential opportunities to be created.

### **6.1.2 Land Capable Of Development On Its Own Right:(Residential Erven)**

10. Will be offered by public competition (tender);
11. Will be subject to an upset price that is market related;
12. Will, within certain pricing cohorts (as determined by the Municipality from time to time) be allocated to take account of persons who might have been previously disadvantaged especially the local people. Tender procedures will be utilised in such instances.

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13. Preference will be given to people who do not own any residential site in town.

14. Will be offered in freehold Title.

### **6.1.3 Land Capable Of Development On Its Own Right (Low Cost housing)**

15. Will be offered in private treaty

16. Preference will be given to people who at the time live in informal dwellings in town.

17. Will be subject to the Housing Beneficiary Waiting List

18. Will be offered in freehold Title subject to the provisions of the Housing Code.

### **6.1.4 Land Capable Of Development On Its Own Right (Bulk Land):**

19. Bulk land parcels will only be released for housing developments as and when the Municipality deems it necessary.

20. Will be offered by public competition (either by public auction or tender as might be the preference of the Municipality from time to time);

21. Will be subject to an upset price that is market related;

22. Might be subject to conditions in support of certain desires or programmes of the Municipality;

23. Land might be located within an area of specific focus or be subject to a specific developmental or social programme. In such instances the maximization of return will not necessarily be the determinant factor, but the desires of the Municipality will be clearly articulated through a tender process.

24. Will be subject to development clauses to ensure that the Municipality's aims are achieved.
25. Will, within certain pricing cohorts (as determined by the Municipality from time to time) be allocated to take account of local persons first particularly women and persons who might have been previously disadvantaged. Tender procedures will be utilized in such instances;

### **6.1.5 Banked Land**

This is the land not surplus to the Municipality's requirements but not immediately required (these are typically properties that have been acquired or earmarked for a capital project which has yet to commence or properties whose leases have lapsed):

26. Will be offered on a short-term tenancy basis;
27. Will be at a market rate, unless determined otherwise by the Municipality;
28. Will be offered by public competition (calling for proposals or public tender).

## **6.2 Commercial and Industrial Land**

### **6.2.1 Land incapable of development on its own:**

29. Will be advertised for objections by the public.
30. Will be offered by private treaty to the respective adjoining owner;
31. Will be priced at market value;
32. The purchaser will be responsible for any and all costs associated with the possible relocation of services, rezoning, survey, registration, transfer and any cost pertaining to the transaction;
33. Will be offered in freehold Title (if the parent property is owned in freehold and if it is leased it shall be incorporated into the lease).

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### **6.2.2 Land Capable Of Development On Its Own Right:**

34. Will be offered by public competition (either by public auction or tender as might be the preference of the Municipality from time to time);
35. Will be subject to an upset price that is market related;
36. Might be subject to conditions in support of certain desires or programmes of the Municipality;
37. Land might be located within an area of specific focus or be subject to a specific developmental or social programme. In such instances the maximization of return will not necessarily be the determinant factor.
38. In such instances, the desires of the Municipality will be clearly articulated through a tender process.
39. Will be subject to development clauses to ensure that the Municipality's aims are achieved.
40. Will, within certain pricing cohorts (as determined by the Municipality from time to time) be allocated to take account of local persons first especially women and persons who might have been previously disadvantaged. Tender procedures will be utilized in such instances;
41. Preference will be given to people who do not own or have active lease agreements with the Municipality for any commercial site in town.
42. Will be offered in lease title only;

### **6.2.3 Banked Land**

Land not surplus to municipal requirements but not immediately required (these are typically properties that have been acquired for a capital project which has yet to commence):

43. The property will be offered on a short-term tenancy basis.
44. The Municipality will have an option to develop in partnership with the private investors if the return from the investment is better than from the rental revenue.
45. The rental will be at a market rate, unless determined otherwise by the Municipality.
46. The tenancy will be offered via public competition.
47. An agreement concluded by private treaty will occur in instances:
  - o Where there is no known demand for the site.
  - o Where it can only be utilized by the adjoining property owner.
  - o This will first have to be publicised for public comment or objections.

### **6.2.4 Multi-Tenanted Premises:**

48. A fixed lease of 3 to 5 year period will be offered in keeping with normal business practice;
49. Will be offered by public tender.

### **6.2.5 Single Tenanted Premises:**

50. Will be treated same as (6.2.4) above.

## **6.3 Social Sites**

### **6.3.1 Worship, Crèche & Institutional**

51. Will be offered by public tender;

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52. Tenderers will be subject to a screening process that will take account of *inter alia* needs of the community, nature of the organisation and ability to discharge intentions;
53. Will be subject to a predetermined price that is market related, or as may be determined by the Municipality;
- o That is market related, in instances where the Municipality has discharged its obligations, by having already provided a minimum number of sites to service the reasonable needs of the community.
  - o That is market related, also in instances where the minimum number of sites has yet to be provided.
54. Will be subject to development clauses to ensure discharge of the intentions.
55. Will be offered in freehold Title.

### **6.3.2 Non Governmental Organisations and non profit organizations**

- Will be offered by public tender
- Tenderers will be subject to a screening process that will take account of *inter alia* needs of the community, nature of the organisation and ability to discharge intentions;
- Will be subject to development clauses to ensure discharge of the intentions.
- Land will be offered on a leasehold title basis;
- Rental will be established on the basis of a nominal rental for the total land component on the lease as may be approved by the Municipality from time to time together with a minimum of 50% of the actual market value of the land occupied by any building development undertaken by the Body, such percentage being



determined by the Municipality from time to time, all this shall be determined based on the level of community benefit the organization does or intends to do.

- Will not be liable for rates if the organization is developmental or a charity organisation.
- Will be liable for full rates if the organization has got no bearing on the development of the community.
- Will be responsible for the costs of services consumed.

## **6.4 Sporting Bodies**

### **6.4.1 Amateur Bodies:**

Amateur Bodies providing sporting opportunities of a nature as may be approved by the Municipality from time to time. In this regard not all sport activity, notwithstanding its possible amateur status, is recognised as a responsibility of the Municipality. The Municipality does however recognise that sporting bodies do provide a valuable service to the community in terms of recreation and development and assist the Council in the discharge of its responsibilities. Accordingly:

56. Will be offered by public tender;
57. Land will be offered on a leasehold title basis;
58. Will be subject to development clause to ensure the discharge of intentions
59. Rental will be established on the basis of a nominal rental for the total land component on the lease as may be approved by the Municipality from time to time together with a minimum of 50% of the actual market value of the land occupied by any building development undertaken by the Body, such percentage being determined by the Municipality from time to time.
60. Will not be liable for rates.
61. Will be responsible for the costs of services consumed.

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62. Will be subject to conditions to allow the Municipality, through its relevant Department/s, to utilise the grounds, subject to further terms and conditions as agreed by the Lessee and the Municipality;
63. Will preclude discrimination;
64. Will recognise that Municipality has a limited responsibility in terms of providing for sporting and recreational opportunities;
65. Will ensure that the Municipality retains a minimum base of sport and recreational venues, which might vary from community to community as well as be constrained by operating and capital budgets;
66. Where existing facilities are being taken over, will recognise the asset value of development already existing, whether this has been directly funded by the Municipality or not;

### **6.4.2 The Professional Sport:**

It is recognised that certain sporting bodies could move to full professional status over time, or might already be professional bodies when seeking a land development opportunity from the Municipality. In instances where there is financial benefit to be derived by an owner, owners or shareholders of a "club" a differentiation will be made from those agreements with amateur bodies in terms of the rental that would be payable.

67. Land rental will be at its full economic value or percentage thereof as may be specifically determined by the Municipality, or alternatively a percentage of all financial turnover will be levied, such percentage being determined by the Municipality from time to time;

- The contribution the organisation makes to the Municipality and that sporting code will be taken into account in considering the appropriate percentage.
- The organisation will be responsible for rates.

## **6.5 Transactions with Provincial Or National Government**

68. Will be undertaken on a private treaty basis;
69. Be at full market value;
70. Will be offered preferably on a Leasehold Title unless determined otherwise by the Municipality.

### **6.5.1 Government Para-statal companies**

- Will be offered on a private treaty basis
- Will be at full market value
- Will be offered on a leasehold title

## **7 PROCEDURE MANUAL**

### **1. Residential , Commercial Land, Social Sites and Sporting bodies**

#### **1.1. bulk and Individual Sites**

##### **1.1.1. Sale and Leasing of Land**

- i. Council delegates the Municipal Manager to prepare a report on the feasibility of disposing of land or the Municipal Manager may also prepare a report to Council recommending the release of land.
- ii. Upon approval by Council of the recommendation to release land, the Municipal Manager shall continue with the disposal process.
- iii. Advertise :
  - a. On the news paper that is easily available to the local people for a period not less than 21 working days for interested and or affected people to submit written objections to the Municipality.
  - b. On the Municipal Notice Boards for the same period and purpose as in (a) above.
  - c. On the site to be released put up a notice same as in (a) and (b) above on a board not less than 1.5 x 1.5 metres in extent for the same period as in (a) and (b) above.
- iv. After the closing date for objections, the Municipal Manager must prepare a report of the objections received with recommendations and submit it to Council for a decision.
- v. After considering the objections by the public and the recommendations by the Municipal Manager, Council must take a decision on whether to proceed or not.

- vi. If no objections were received, the municipal manager shall continue with the disposal process without going back to Council.
- vii. If the decision is no, then the process stops and if the decision is yes, the Municipal Manager shall continue with the disposal process.
- viii. The Municipal Manager shall prepare the Terms of Reference for the bidders or prepare a tender document or if an auction is the preferred method of disposal, then the Municipal Manager shall procure the services of an Auctioneer to take forward the process.
- ix. The Municipal Manager shall advertise for a period of seven working days for the interested bidders to submit their bids as per the stipulations of the Supply Chain Management Policy of the Municipality.
- x. From here on, the processes of the Supply Management Policy shall be followed.
- xi. After the selection process has been completed ,the Municipal Manager must on the basis of the bidding documents negotiate an agreement with the selected bidder and if successful, then enter into such an agreement under such terms and conditions as in the bidding documents.( Municipal Systems Act: Act 32/2000 section 84)
- xii. After an agreement has be entered into the Municipal Manager must;
  - a. Make copies of the agreement available for public inspection.
  - b. Put up a notice on its notice boards and the media with the name of the selected bidder and the place where the documents can be inspected

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by the public and the time for which the documents will be available.

## **1.2. Individual Sites ( Government Housing Programme)**

- xiii. Prospective beneficiaries shall be allocated according to the beneficiary waiting list prepared for the Governments Housing Subsidy Programme.
- xiv. In preparing the waiting list, preference should be given to people currently living in informal dwellings in town, the rational is that the municipality should strive to get rid of squatter settlements which would be in line with the Government's objectives.
- xv. Qualification criteria shall be that one set out in the National housing Code.

## **1.3. Individual sites (in a newly established township)**

### **1.3.1. Sale of land**

- i. Council delegates the Municipal Manager to prepare a report on the feasibility of disposing of land or the Municipal Manager may also prepare a report to Council recommending the release of land.
- ii. Upon approval by Council of the recommendation to release land, the Municipal Manager shall continue with the disposal process.
- iii. The Municipal Manager shall prepare the Terms of Reference or the qualification criteria for the prospective beneficiaries.
- iv. The Municipal manager shall establish a selection committee or may choose to use one of the Municipality's bid committees.

- v. Approved beneficiaries shall enter into an agreement of sale with the Municipality on such terms as may be determined by the Municipality.
- vi. The list of the approved beneficiaries shall be made available to the public for inspection and the criteria used in selecting those individuals.

## **2. Provincial and National Government**

### **2.1. Sale and Leasing of Land**

- i. Upon application by a Government Department for the acquisition of land, the Municipal Manager shall prepare a report to Council with Recommendations.
- ii. Council shall take a decision after having satisfied itself that the land is not required by Council to provide a basic service to the community or that its release shall contribute towards the development of the community, on the basis of the report mentioned in (i) above
- iii. The Municipal Manager shall negotiate an agreement with the applying department and enter into such an agreement.

Signed on the 20<sup>th</sup> day of June 2022



**MUNICIPAL MANAGER**