

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
17 November 2015  
(Also the agenda for the Mayoral Committee Meeting : 25 November 2015)**

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**2.  
REVISION OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF  
THE OVERSTRAND MUNICIPALITY**

**7/R**

**A Kotze**

**(028) 316 3724**

**Hermanus Administration**

**15 October 2015**

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**1. Executive Summary**

To obtain approval for the revision of the Administration of Immovable Property Policy of the Overstrand Municipality as first approved and adopted by Council on 1 November 2004 and further revised on 27 August 2008, 27 May 2009 and 23 September 2014 respectively.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Property Administration

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
The encouragement of structured community participation in the matters of the municipality  
Promotion of tourism, economic and social development

**4. Delegated Authority**

None

**5. Legal Requirements**

Cape Municipal Ordinance 19 of 1974  
Local Government: Municipal Systems Act (Act 32 of 2000)  
Local Government: Municipal Finance Management Act (Act 56 of 2003)  
Municipal Asset Transfer Regulations (2008)

**6. Background/Discussion/Evaluation/Conclusion**

The Local Government: Municipal Finance Management Act (Act 56 of 2003) ("MFMA") came into effect on 1 July 2004. This Act, in section 14 thereof, deals specifically with the transfer (subsequent to a alienation) of municipal owned immovable property. To give effect to this act, Council adopted the first Assets Management Policy: Management and Administration of Immovable Property in November 2004. However, in terms of Section 168 of

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the MFMA, the Municipal Asset Transfer Regulations were promulgated with effective date 1 September 2008. These regulations contain the framework and guidelines for the alienation, letting or disposal of assets by the municipality which necessitated the amendment of the policy in 2014. The policy was subsequently amended in 2014 taking into consideration the abovementioned regulations and the legal opinion that was obtained which dealt with the leasing and alienation of municipal owned immovable property.

Although the said legal opinion obtained in June 2014 stated that the alienation of municipal owned immovable property must be done by means of a competitive process, it is not always practical and cost effective to do so.

A non-viable immovable property is defined as a property that, owing to urban planning, physical constraints or extent cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner's property.

In a recent attempt to advertise a tender for the sale of a non-viable portion of property we were informed that the advertising of such a tender will not be competitive and cost effective as only the adjoining owner will be able to tender for the said property. In this regard it must also be mentioned that in some circumstances the value of the non-viable property will be lesser than the costs to advertise the tender. The Supply Chain Management Unit, when we submitted a tender for the alienation of non-viable municipal immovable property, provided the following comments:

*“Following our Bid Specification Meeting held on 18 August 2015 regarding the sale of a portion of unregistered ERF 4771, the committee's opinion is that, given the position of this property, the way it is made-up, the current lease agreement in place relating to it and what the property can be used for, a competitive bidding process will not be competitive nor cost effective and as a result is not the correct process to follow for the disposal of this property.*

*In terms of MFMA Section 14, any transfer of a capital asset must be consistent with a municipality's Supply Chain Management (SCM) Policy. The Asset Transfer Regulations, which applies to the transfer and disposal of capital assets by a municipality, goes further to say that the transfer or disposal of an asset and the compensation paid for the asset must be consistent with criteria set out in the disposal management system of the municipality (i.e. being the system contemplated in regulation 40 of the SCM Regulations).*

*The SCM Regulations give the municipality various options on how to dispose of its assets, but in relation to immovable property states only*

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*that it must be sold at market related prices except when the public interest of the plight of the poor demands otherwise. It is not specific to say that a competitive bidding process needs to be followed.*

*Although our municipality applies disposal in terms of its own asset management policy, similar principles can apply to disposal management as those applied to procurement. When considering the procurement of goods and services a municipality must look at principles such as; the nature of the product/service, what it will be used for and whether or not the market has the capacity to offer what the municipality needs. Only once that is identified can a municipality identify the best procurement process to be followed, whether it be competitive bidding, deviation, transversal contract, procuring the services from another organ of state, etc.*

*When considering a competitive bidding process, one must be able to confirm that the market has the capacity to deliver the needed goods/services, that there are enough suppliers in the market to ensure competition and that the process will result in a cost effective outcome (not only with regards to the final cost paid, but also that the process itself is the most cost effective one possible).*

*With this in mind it is the committee's opinion that a competitive bidding process is not the most advantages and that an alternative disposal process be followed."*

Guidance as to how other Municipalities deal with non-viable immovable property was obtained. The policies of, amongst others, the following Municipalities were studied:

- (a) Policy of the Management of certain of the City of Cape Town's Immovable Property Policy (2010);
- (b) Cape Agulhas Municipality's Land Disposal Policy (2012);
- (c) Drakenstein Municipality's Policy for the Management and Administration of Immovable Property (2009);
- (d) Swartland Municipality's "Beleid Insake die Beheer en Administrasie van Munisipale Onroerende Eiendom".

The abovementioned policies all make provision for the direct alienation of municipal owned immovable property in certain circumstances. One of these circumstances is when the Municipality wants to alienate a non-viable property to the owner of the adjoining property.

Due to the above, it is proposed to revise the policy. The main changes to the policy entail:

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- (a) Providing more definitions;
- (b) Providing for the direct alienation of non-viable immovable property;
- (c) Changing the delegated authority for the approval of certain encroachments from Council to the Executive Mayor who has the delegation to approve long term leases. As this is not alienation, it is not needed to obtain the Council's approval.

All the changes are indicated in colour for easy reference.

**7. Financial Implications**

None

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

Annexure A: Revised Administration of Immoveable Property Policy

**RECOMMENDATION TO THE COUNCIL:**

that the revised Administration of Immoveable Property Policy as attached per Annexure A **be approved** and be implemented with effect from 1 December 2015.

<b>RESPONSIBLE OFFICIAL :</b>	<b>A KOTZE</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>1 DECEMBER 2015</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>N/A</b>
<b>ARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
17 NOVEMBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

that the revised Administration of Immovable Property Policy **be approved** and be implemented with effect from 1 December 2015.

**RESPONSIBLE OFFICIAL :**

**A KOTZE**

**TARGET DATE FOR IMPLEMENTATION :**

**1 DECEMBER 2015**

**TARGET DATE TO INFORM APPLICANT :**

**N/A**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**

# OVERSTRAND MUNICIPALITY



## Administration of Immovable Property Policy

This policy was drawn up in terms of:  
LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003  
MUNICIPAL ASSET TRANSFER REGULATIONS  
("The Regulations")

Approved by Council  
25 NOVEMBER 2015

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## INTRODUCTION

**WHEREAS** the Municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in Section 151(3) of the Constitution and Section 4(1)(a) of the Systems Act.

**AND WHEREAS** the Municipality has executive and legislative authority in respect of, and has the right to administer the matters provided for in Sections 156(1) and 229 of the Constitution, Sections 8(1) and 11(1) of the Systems Act and Section 83(1) of the Structures Act.

**AND WHEREAS** the municipal council makes decisions concerning the exercise of all the powers and the performance of all the functions of the Municipality, save for those matters excluded by legislation in accordance with Section 160(1)(a) of the Constitution;

**AND WHEREAS** the Municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers in terms of Section 156(5) of the Constitution and Section 8(2) of the Systems Act;

**AND WHEREAS** the municipal council, within the Municipality's financial and administrative capacity and having regard to practical considerations, has the duty to use the resources of the Municipality in the best interests of the local community in terms of Section 4(2)(a) of the Systems Act; and

**AND WHEREAS** there is a need to provide a policy framework for the management of the Municipality's immovable property, to establish criteria for determining various categories of immovable property in order to regulate the use, sale and lease thereof and to establish criteria within which property transactions may be regulated;

**NOW THEREFORE** this policy provides as follows:

**DEFINITIONS**

In this Policy a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act (nr 56 of 2003) has the same meaning as in the Act, and means:

***“Accounting Officer”***

The Municipal Manager appointed in terms of Section 54A of the Local Government: Municipal Systems Act (nr 32 of 2000) and being the Head of Administration and Accounting Officer in terms of Section 55 of the Local Government: Municipal Systems Act (nr 32 of 2000) and includes any person:

- (a) acting in such position, and
- (b) to whom the Municipal Manager has delegated a power, function or duty in respect of such a delegated power, function or duty.

***“Basic municipal service”***

The amount or level of any municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety of the environment and for the purposes of this Policy includes but is not restricted to electricity, refuse collection, sanitation, local roads, storm water drainage, fire services and water services.

***“Bid adjudication committee”***

A committee as provided for in the Municipality’s Supply Chain Management Policy.

***“Capital asset”***

Any immovable asset such as land and buildings, also referred to as immovable property.

***“Chief Financial Officer”***

An officer of the Municipality appointed as the Head of the Finance Department and includes any person:

- (a) acting in such position, and
- (b) to whom the Chief Financial Officer has delegated a power, function or duty in respect of such a delegated power, function or duty.

***“Community value”***

The extent of benefit or gain generated when resources, input, processes or policies are combined to improve the lives of individuals or society as a whole.

***“Competitive process”***

A call for proposals, a closed tender, a public tender or a public auction.

***“Council” or “Municipal Council”***

A municipal council referred to in Section 18 of the Local Government: Municipal Structures Act (nr 117 of 1998) and for the purpose of this Policy, the municipal council of the Overstrand Municipality, including its duly authorised nominee.

***“Disposal”***

Includes the demolition, dismantling or destruction of the immovable property or any other process applied which results in the loss of ownership of the asset otherwise than by way of transfer of ownership.

**“Encroachment”**

Any use of or physical object which intrudes on or over municipal property or property which vests in the municipality, or property the Council has control over or other property in respect of which a servitude or other property right has been registered in favour of the municipality;

**“Exempted capital asset”**

A Municipal capital asset (immovable property) which is exempted by section 14(6) of the MFMA from the provisions of section 14 of the mentioned Act.

**“Fair market value”**

The value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell the asset in an arm's length transaction.

**“High value”**

When the fair market value of the capital asset exceeds any of the following amounts:

- (a) R50 million;
- (b) One percent of the total value of the capital assets of the municipality as determined from the latest available audited annual financial statements of the municipality; or
- (c) An amount determined by resolution of the Council of the municipality which is less than (a) or (b).

**“Informal trading”**

Refers to the sale of legal goods and/or services by individuals and/or groups in areas demarcated for informal trading.

**“Landlocked”**

When a property has no legal means of access. And without access, except perhaps by boat or helicopter, the property is rendered virtually unusable.

**“Long term”**

A period longer than 3 years.

**“MATR”**

The Municipal Asset Transfer Regulations published under GN R878 in GG31346 of 22 August 2008 with effect from 1 September 2008.

**“MFMA”**

The Local Government: Municipal Finance Management Act (nr 56 of 2003).

**“Municipality”**

The Overstrand Municipality.

**“National Treasury’s Guidelines”**

The official guidelines on supply chain management issued by the Minister in terms of Section 168 of the MFMA.

**“Non-viable immovable property”**

A property that, owing to urban planning, physical constraints or extent, cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner's property.

**“Notice boards”**

The official notice boards at the municipal offices and municipal libraries.

**“Organ of state”**

Includes a national department or national entity, a provincial department or provincial public entity, a municipality or municipal entity or any other organ of state within the meaning assigned to “organ of state” in section 239 of the Constitution.

**“Preference”**

The local residents of a specific area will be afforded preference in respect of the letting of immovable properties within that demarcated/designated area.

**“Public facilities”**

Facilities providing services to the community which cannot be supplied directly to the individual residential dwelling unit satisfying specific individual and/or community needs including safety; security; communication, recreation; sport; education; health; public administration; cultural and social needs generally regarded as the responsibility of the Government but also provided privately when it is perceived that the government provided services are inadequate.

**“Public property”**

All land owned by any organ of state and public property not registered in the name of the Overstrand Municipality that is used, managed, protected, conserved and enhanced in the interests of the whole community, e.g. road reserves, open space and state land that vests in the Municipality or is proclaimed by any other organ of state.

**“Public Road”**

Any road, street or thoroughfare or any Public Place (whether a thoroughfare or not) which is commonly used by the general public or to which the public has a right of access, and includes:

- (a) any services servitude and public passage on public land;
- (b) the side-walk or verge of any such road, street or thoroughfare;
- (c) any bridge, structure or drift traversed by any such road, street or thoroughfare; and
- (d) any other work or object forming part of or connected with or belonging to such road, street or thoroughfare.

**“Real Rights”**

The rights to traverse privately owned property with servitudes which are notarially registered in the Deeds Office or contained in Title Deed Conditions.

**“Right to use, control, manage”**

A right to use, control or manage the asset for a period exceeding one calendar month without ceding legal ownership in the asset.

**“Social care”**

Defined as child care facilities in so far as it contributes to the functioning of a multi-use child care facility and is operated on a non-profit basis; services provided by registered welfare, charitable, non-profit, cultural organisations; centres utilised as homes for the handicapped and disabled persons; non-profit rehabilitation centres; homes or centres for indigent, battered or destitute people; organisations for the homeless and elderly; youth activity or culture centres and organisations; community development organisations operating on a non-profit basis or amateur sporting, cultural or recreational organisations.

**“Structures Act”**

The Local Government: Municipal Structures Act (nr 117 of 1998).

**“Supply Chain Management Policy”**

The Supply Chain Management Policy of the Overstrand Municipality approved and adopted by Council as amended from time to time.

**“Systems Act”**

The Local Government: Municipal Systems Act (nr 32 of 2000).

**“the Constitution”**

The Constitution of the Republic of South Africa, 1996.

**“the Ordinance”**

The Local Government: Municipal Ordinance, 1974 (Ordinance 20 of 1974).

**“The Regulations”**

Local Government: Municipal Finance Management Act (nr 56 of 2003) Municipal Asset Transfer Regulations (MATR).

**“Transfer”**

Transfer of ownership as a result of sale or other transaction (e.g. exchange, donation, ect).

**APPLICATION OF THE POLICY**

1. This policy applies to:
  - (a) the transfer or disposal of immovable property by the Municipality;
  - (b) the acquisition of immovable property by the Municipality;
  - (c) the registration of servitudes over municipal immovable property; and
  - (d) the granting by the Municipality of rights to use, control or manage immovable property.
  
2. This Policy does not apply to:
  - (a) immovable property that falls within the area of responsibility of the Municipality's Housing Department;
  - (b) immovable property owned by the Municipality which is subject to a Public-Private Partnership; and
  - (c) the grant of a right to lease, use control or manage the Municipality's immovable property for a period of a calendar month or less.

**GENERAL PRINCIPLES**

3. The Municipality may:
  - (a) alienate or let or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the Municipality;
  - (b) grant a servitude, way leave, encroachment or other rights on any immovable property of which the Municipality is the owner
    - (i) subject to this policy document and the provisions of applicable legislation; or

- (ii) unless it is precluded from so doing by law or the conditions under which such property was acquired by the Municipality.
  - (c) enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and
  - (d) enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA and the Public-Private Partnership Regulations.
4. No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including - but not limited to - legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

#### **DISPOSAL OR TRANSFER OF IMMOVABLE PROPERTY**

5. The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.
6. A decision by the municipal council that a specific immovable property is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that immovable property has been sold, transferred or otherwise disposed of in accordance with Section 14(3) of the MFMA.
7. The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g. non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.
8. Transfer or disposal of a non-exempted high value immovable property
- 8.1 The Municipality may transfer ownership or otherwise dispose of a non-exempted high value immovable property only after:
- (a) the Accounting Officer, through the Property Administration Department, has conducted a public participation process to facilitate the determinations the municipal council must make in terms of sections 14(2)(a) and (b) of the MFMA; and
  - (b) the municipal council has, in terms of sections 14(2)(a) and (b) of the MFMA,;
    - (i) decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services;