

# BA-PHALABORWA LOCAL MUNICIPALITY



## POLICY ON SALE AND DISPOSAL OF MUNICIPAL LAND/PROPERTY

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PROCEDURES AND PRINCIPLES ON DISPOSAL OF  
MUNICIPAL LAND

**2016-2017**

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## 1 GLOSSARY OF TERMS

AFS	Annual financial Statements
AP	Accounting Procedure- This is a procedure which is executed to ensure that reliable information is recorded in the annual financial statements
AR	Assets Register
ASB	Accounting standards Boards
CFO	Chief Financial Officer
FMBPR	Financial management Best Practice Requirement
FCP	Financial Control procedure
FSOP	Financial Standard Operating Procedure
FSOPM	Financial Standard Operating Procedure Manual
GAAP	General Accepted Accounting Practice
GAMAP	General Accepted Municipal Accounting Practice
GL	General Ledger
GRAP	General Recognised Accounting Practice
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
IP	Investment Property
IPSAS	International Public Sector Accounting Standards
LCP	Legislation Compliance Procedure
MFMA	Municipal Finance Management Act
MM	Municipal Manager
NT	National Treasury
PPE	Property Plant and Equipment
#	Number

## 2 DEFINITIONS

“Accounting Standards Board”	was established by the Public Finance Management Act to set standards of Generally Recognized Accounting Practice (GRAP) as required by the Constitution of the Republic of South Africa.
“Assets”	are resources controlled by the municipality as the result of past events and from which future economic benefits or future service potential are expected to flow to the municipality and for the purpose of this policy refers to property, plant and equipment but excludes Investment Properties.
“Asset categories”	are the asset categories as per the Ba-Phalaborwa Asset Register.
“Amortisation”	is the systematic allocation of the depreciable amount of an intangible asset over its useful life.
“Basic Municipal Services”	means a 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 or the environment.
“Biological Assets”	are living animals or plants.
“Capitalisation”	is the recognition of expenditure as an Asset in the Financial Asset Register.
“Carrying amount”	is the amount at which an asset is included in the Statement of Financial Position after deducting any accumulated depreciation and accumulated impairment thereon.
“Cash-generating assets”	are assets managed with the objective of generating a commercial return.
“Control items”	are items of assets that are not significant enough for financial recognition but are valuable enough to warrant special safe-guarding.
“Cost”	is the amount of cash or cash equivalents paid or the fair value of the other consideration given or received to acquire an asset at the time of its acquisition or construction.
“Cost of acquisition”	is all the costs incurred in bringing an asset item to the required condition and location for its intended use.
Current replacement cost	a measure of replacement value - the cost of replacing an existing asset with a modern asset of equivalent capacity.
“Depreciation	is the systematic allocation of the depreciable amount of an asset over its useful life.
“Depreciable amount”	is the cost of an asset, or other amount substituted for cost in the financial statements, less its residual value.
“Director”	is the “head of each Directorate” that has the functional accountability for and control of the physical management of a particular set of assets in order to achieve the municipality’s strategic objectives relevant to that directorate. The execution of this responsibility will require the relevant asset manager to control the acquisition, utilisation, management and disposal of this set of assets to optimise the achievement of these objectives.

“Fair value”	is the amount for which an asset could be exchanged between knowledgeable willing parties in an arm’s length transaction.
“Financial asset register”	is the control register recording the financial and other key details for all municipal assets recognized in accordance with this policy.
Finance lease	is a lease that transfers substantially all the risks and rewards incidental to ownership of an asset. Title may or may not eventually be transferred.
“Heritage Assets”	are assets that have a cultural, environmental, historical, natural, scientific, technological or artistic significance and are held indefinitely for the benefit of present and future generations. Examples are works of art, historical buildings, mayoral chains and statues.
“Impairment loss” of a cash-generating asset	is the amount by which the carrying amount of an asset exceeds its recoverable amount. The recoverable amount is the higher of the fair value less costs to sell and its value in use.
“Impairment loss” of a non cash-generating asset	is the amount by which the carrying amount of an asset exceeds its recoverable service amount. The recoverable service amount is the higher of the fair value less costs to sell and its value in use.
“Infrastructure assets”	are defined as any assets that are part of a network of similar assets. Examples are roads, water reticulation schemes, sewerage purification and trunk mains.
“Investment properties”	is defined as property (land and/or a building, or part thereof) held (by the owner or the lessee under a finance lease) to earn rentals or capital appreciation, or both (rather than for use in the production or supply of goods or services or for administration purposes or sale in the ordinary course of operations.
“Non-cash-generating assets”	are assets other than cash-generating assets.
“Other assets”	are defined as assets utilized in normal operations. Examples are plant and equipment, motor vehicles and furniture.
“Prescribe”	means as prescribed by the Minister of Finance by regulation.
“Property, plant or equipment” (PPE)	<p>Means tangible assets that:</p> <ul style="list-style-type: none"> <li>(a) are held by a municipality for use in the production or supply of goods or services, for rental to others, or for administrative purposes, and</li> <li>(b) are expected to have a useful life extending for more than one financial year.</li> </ul> <p>This includes items necessary for environmental or safety reasons to leverage the economic benefits or service potential from other assets. Insignificant items may be aggregated. Property, plant and equipment is broken down into groups of assets of a similar nature or function in the municipality’s operations for the purposes of disclosure in the financial statements.</p>
“Recoverable amount”	is the amount that the municipality expects to recover from the future use of an asset, including its residual value on disposal.

“Remaining useful life”	Is the time remaining until an asset ceases to provide the required standard of performance or economic usefulness.
“Residual value”	is the net amount that the municipality expects to obtain for an asset at the end of its useful life after deducting the expected costs of disposal.
“Useful life”	is either: (a) the estimated period of time over which the future economic benefits or future service potential embodied in an asset are expected to be consumed by the municipality, or (b) the estimated total service potential expressed in terms of production or similar units that is expected to be obtained from the asset by the municipality.

### 3. PURPOSE

The purpose of this policy is to:

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

### 4. VALUES TO BE ACHIEVED BY THE POLICY

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

### 5. PROCUREMENT

The Procurement Tender Committee in terms of the Preferential Procurement Policy Framework Act will evaluate all tenders. The Alienation Committee responsible for the Alienation of Municipal Land will assist the Procurement Tender Committee when necessary.

### 6. PROCESS TO BE FOLLOWED FOR THE ALLIENATION OF APPLICATION

Before any Immovable property is disposed of, a report will be submitted to Council through the report flow system for Council to take a decision whether the property is not required for the provision of basic municipal services and / or development.

## 7. LEGISLATIVE FRAMEWORK

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

### A. CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA. 1996 (ACT 108 OF 1996)

1. The objects of Local Government are in particular set out in section 152 of the Constitution, which reads thus:

*“(1) The objects of local government are-*

- (a) to provide democratic and accountable government for local communities;*
- (b) to ensure the provision of services to communities in a sustainable manner;*
- (c) to promote social and economic development*
- (d) to promote safe and healthy environment and;*
- (e) to encourage the involvement of communities and community;*
- (f) Organization in the matters of local government.*

- (2) A municipality must strive with its financial and administrative capacity to Achieve the objectives as set out in sub-section.*

- (3) The Constitution further determines that local government shall have the developmental duties as set out in section 153 that reads as follows:*

*‘A municipality must-*

- (4.4) Structure and manage its 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; and*
- (4.5) Participate in national and provincial development programs.”*

4. Procurement is specially addressed in section 217 of the 217 of the Constitution and reads as follows:

*“PROCUREMENT-*

- 1. When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation contrast for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.*
- 2. Sub-section 1 does not prevent the organ of state or institution referred to in that subsection from implementing a procurement policy providing for -*



- (a) *categories of preference in allocation of contrast;*
- (b) *The protection or advancement of persons, disadvantaged by unfair discrimination*

5. Section 217 (3) of the Constitution provides for the enactment of specifically tailored legislation with regard to procurement. This led to the enactment of the Preferential Procurement Policy Framework Act 2000 (Act 5 of 2000)

## **B. LOCAL GOVERNMENT MUNICIPAL SYSTEM ACT 2000 (ACT 32 OF 2000)**

1. The legislation again provides in chapter 6 of this Act under the heading “ *Municipal Services*”, that in the event that a local council should source services through a service delivery agreement it shall, subject to preference or categories of service providers in order to advance the interest of persons, disadvantaged by unfair discrimination as long as the manner in which such preference is exercised does not comprise or limit the quality, coverage, cost and development impact of the services.

## **C. LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT 2003 (ACT 56 OF 2003)**

1. The preamble to this Act reads as follows:

*“To ensure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of local government to establish treasury norms and standards for local spheres of government and to provide for matters connected therewith.”*

2. The Act in Chapter 3 under the heading “*Municipal Revenue*” provides in section 14 for the disposal of capital assets Section 14 reads as follows:
3. The Act in Chapter 3 under the heading “*Municipal Revenue*” provides in section 14 for the disposal of capital assets Section 14 reads as follows:

*“1. A municipality may not transfer ownership as a result of sale or other transaction otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services*

*2. A municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated in sub-section (1), but only after the municipal council, in a meeting open to the public-*

- (d) *has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services, and*



- (e) has considered the fair market value of the asset and economic and community value to be received in exchange for the assets.
- 3. A decision by the a municipal council that a specific capital assets is not needed to provide the minimum level of basic municipal services, may not be reserved by the municipality after that asset has been sold, transferred or otherwise dispose of
- 4. A municipal council may delegate to the accounting officer of the municipality its power to make the determinations referred to in subsection (2)(a) and (b) in respect of immovable capital assets below a value determined by the council.
- 5. Any transfer of ownership of a capital asset in terms of subsection 2(4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy, which the municipality must have and maintain in terms of section 111.
- 6. This section does not apply to the transfer of capital assets to another municipality or to a municipal entity or to a national provincial organ of state ”
- 4. The aforesaid “Supply Chain Management” is provided for in section 110 to 119 of the Act. This part of the Act is made applicable to “The Procurement by a Municipality or Municipality Entity of Goods and Services and disposal by a municipality or municipal entity of goods no longer needed.”
- 5. Detailed requirements are set out in Section 112 with regard to the requirements of the supply chain management policy to be fair, equitable transparent, competitive and cost effective.
- 6. The provisions of this Act must therefore be taken into account.

**D. BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT 2003 (Act 53 of 2003)**

- 1. This Act provides for the establishment of the Black Economic Empowerment Advisory Council
- 2. The aforesaid aid council will *inter alia* be responsible for the creation of a strategy for broad-based black economic empowerment that must provide for an integrated co-ordinated and uniform approach to broad-based black economic empowerment by all organs of state including local government

3. The objects of the Act are further aimed at increasing the broad-based and effective participation of black people in the economy and to promote a higher growth rate, increased employment and more equitable income distribution.

#### **E. LOCAL GOVERNMENT ORDINANCE 1939 (Ordinance 17 of 1939)**

1. In terms of section 3 of the Ordinance, it shall be applicable to every local authority consulted there under in the manner and the extent prescribed.
2. Section 79 of the ordinance contains the general powers of local authorities.
3. Provision is made *inter alia* for the letting and/or granting of use of immovable property to schools, sport clubs, persons or bodies of persons to be used exclusively for games, sport, recreation or cultural activities and the procedure to be followed in such cases is outlined.
4. Provision is further made for granting and donation of land to institutions, organizations, societies or clubs that promote public health, welfare, education, science, literature, sport and recreation and other similar activities.
5. A procedure is provided for in section 79 in respect of the different instances where a local government wishes to dispose of and /or alienate immovable property. The procedure entails in essence that notice should be given of the resolution of the council to alienate the property by displaying it on a public notice board and publishing it in a newspaper inviting any person who wishes to object to the exercise of any such power of alienation to lodge his/her objection in writing with the municipal manager within a stated period not less than fourteen days. This notice in terms of the Ordinance is over and above the subsequent notice to invite tenders.
6. In terms of section 79(24) of the Ordinance the Council may, *inter alia*, hire or lease any immovable property for the performance or discharge of any function or duty which the Council is in terms of any law authorized or required to perform or discharge. In such event the Council is obliged to have the rental is to be nominal. However, in terms of subsequent(c) of this section, the Council, not being a Council referred to in terms of in part I or II of the sixth Schedule to the Ordinance, is excluded from the above provision and may within its discretion accede to any rental payable for the hiring or leasing of a property, even if such rental exceeds the market related of the different hiring or leasing of a property
7. Should the Council wish to alienate immovable property as set out aforesaid it shall cause an evaluator to evaluate immovable property it wishes to sell in accordance with the specific provisions applicable to the different categories of land.
8. In terms of section 79(18) (e), a Council referred to in part I or II of the sixth schedule to this Ordinance may let/rent/sale immovable property at less than market value: the said section reads as follows:

A council, excluding a council in part I and II of the Sixth schedule to this Ordinance shall not-

“(i) *Let immovable property at a lower rental than determined,*

(ii) *sell, alienate or dispose of immovable in any other manner, excluding exchange, grant a servitude or alienate a right at a lower amount than the amount at which it has been evaluated, and*

- (iii) *Exchange immovable property for other property in the amount at which the other property has been evaluated is lower than the amount, at which the immovable property, which the council wishes to exchange, has been evaluated,*

*In accordance with paragraph with paragraph (d) unless the Administrator has subject to such terms and conditions as he may determine, granted his approval thereto beforehand.”*

9. Although sub-ordinate to national legislation, the provisions of the Ordinance remain valid, particularly with regard to procedures, relating to the alienation (sale or letting) of property.

#### **F. PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 (ACT NO 5 OF 2000)**

1. An organ of state is defined in-section 1(iii) of the said Act as meaning *inter alia* a municipality contemplated in the Constitution and/or any other institution or category of institution.
2. *Section 2 of this Act under the heading*

*“Framework for implementation of preferential Procurement policy”*

*Provides that*

- 2(1) *an organ of state must determine its preferential procurement policy and implement it within the following framework:*
  - (a) *A preference point system must be followed;*
  - (b)(i) *for contracts with Rand value above a prescribed amount, a maximum of 10 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tenders scores 90 for price;*
  - (ii) *for contracts with a Rand value of equal to or below the prescribed amount a maximum of 20 points may be allocated for the specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 80 points;*
  - (c) *Any other acceptable tenders which are higher in price must score fewer points on a pro –rata basis, calculated on the tender prices in relation to the lowest acceptable tender, in accordance with a prescribed formula;*
  - (d) *The specific goals may include-*
    - (i) *Contracting with persons or categories of persons historically disadvantaged by unfair discrimination on the basis of race; gender or disability;*
    - (ii) *Implementing the programs of the reconstruction and development program as published in Government Gazette Nr 16085, dated 23 November 1994;*

- (e) Any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a tender.
  - (f) The contract must be awarded to the tender who scores the highest points unless objective criteria in addition to those contemplated in paragraph (d) and (e) justify the award of another tender;
  - (g) Any contract awarded on account of false furnished by tender in order to secure preference in terms of this Act may be cancelled.
3. The provisions of the Preferential Procurement Policy Framework Act (Act No. 5 of 2000). (“the Procurement Act”) and in particular Regulations 5 and 6, promulgated in terms of the said Act, also apply to the letting and hiring of movable and immovable assets by the council.
4. The provisions of the Procurement Act and its Regulations apply to the alienation (sale or letting) and hiring of assets by the council. This implies the calling of tenders and the application of the 80/20 and 90/10 preferences points system to all contracts of alienation (letting and hiring) to be concluded by the council.
5. Therefore, if the Council intends to alienate (sale or letting) municipal property to a third party, the principles of the Procurement Act and its Regulations will apply. Thus, in the event of the alienation (sale or letting) of a property at a selling price/rental value less than R30 000-00, the council will be empowered to conclude such lease/sale out of hand. In the case of R30 000-00, the calling of tenders and the preference points have to be applied. Public tenders and the application of the preference points system will not apply to those transactions being exempted from these provisions and which will be discussed below.
6. With regard to the hiring of immovable property by any Council from third parties, the same principles as set out in the preceding paragraph will apply, subject to certain exemptions.
7. it is of importance to note that Section 2(1)(f) creates a ground of exemption in providing that the Council must award the tender to the party who scores contemplated in the specific goals for which points are allocated justifying the award of the tender to another party,
8. The aforesaid exemption must be read together with section 3 under the heading “Exemption” which provides that the Minister of Finance may;
- ‘..... On request exemption organ of state (like the council) from any or all the provisions of this Act if;
- (a) It is in the interest of national security;
  - (b) The likely tenderers are international suppliers; or
  - (c) It is in the public interest

**G. PREFERENTIAL PROCUREMENT REGULATIONS, 2001 AS PUBLISHED IN GOVERNMENT GAZETTE NR 22549 DATED 10 AUGUST 2001**

In line with the principles as contained in the Constitution these Regulations define historically disadvantaged individuals as being South African citizens-

*“Who due to the apartheid policy had no franchise in national elections prior the new constitutional dispensation and/or who is a female and/or is disabled?”*

And further than that a person who obtained South African citizenship on or before coming into effect of the interim constitution is deemed not to be a historically disadvantaged individual.

1. *“Small medium and micro enterprises* are defined to have the same meaning as assigned in terms of the National Small Business Act (Act 102 of 1996).
2. The National Small Business Act, defines small, medium and micro enterprises as being a small business or organization that are distinct business entitles managed by one or more owners that can be classified as a micro, very small, small or a medium enterprise in
3. A “tender” is defined in section 1(o) as follows:  
  
*“means a written offer or bid in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services of goods.”*
4. it is expressly provided that the Regulations are applicable to the council and the council may –  
  
*“only apply a preferential procurement system which is in accordance with the Act (referring to the Preferential Procurement framework Policy Act) and these regulations.”*
5. Sections 5 and 6 of the said Regulations contain the prescribed formulae that must be used to calculate the points for price in respect of the sale and letting of assets namely the so called 80/20 and 90/10 preference point system, These preference systems are being defined hereunder.
6. it is obligatory for the Council to state in the tender documents the preference point system that will be applied in the adjudication of any particular tender.
7. in line with the Preferential Procurement Policy Framework Act, the Regulations provide in section 9 thereof that a-  
  
*“contract may on reasonable and justifiable grounds be awarded to a tender that did not score the highest number of points.”*

9.1 The 80/20-preference point for the alienation (sale and letting) of assets.

- (1) The following formula must be used to calculate the points for price in respect of tenders with a Rand value equal to, or above R30 000-00 and up to a Rand value of R500 000 and which relate to the sale and letting of assets. Organs of State may, however, apply this formula for sales and letting of assets with a Rand value less than R30 000, if and when appropriate:

$$Ps \left( 1 + \frac{pt - po}{Ph} \right)$$

Ph

Where

Ps = Points scored for price of tender

Consideration

Pt = Rand value of tender under consideration

Ph = Rand value of highest tender

- (2) A maximum of 20 points may be awarded to a tenderer for being an HDI and/or sub-contracting with an HDI and/or achieving any of the specified goals stipulated in regulation 17
- (3) The points scored by a tenderer in respect of the goals contemplated in sub-regulation (2) must be added to the points scored for price.
- (4) Only the tender with the highest number of points scored may be selected.

9.2 The 90/10-preference point system for the alienation (sale and letting) assets.

- (1) The following formula must be used to calculate the points for price in respect of tenders with a Rand value above R500 000 and which relate to the sale and letting of assets:

$$Ps = 90 \left( 1 + \frac{pt - ph}{Ph} \right)$$

Ph

Where

Ps = Points scored for price of tender under

Consideration

Pt = Rand value of tender under consideration

Ph = Rand value of highest tender.

- (2) A maximum of 10 points scored by a tenderer for being and HDI and/or achieving any of the specified goals stipulated in regulation 17.
  - (3) The points scored by a tenderer in respect of the goals contemplated in sub-regulation (2) must be added to the points scored for price.
  - (4) Only the tender with the highest number of points scored may be selected.
- (10) In the event that all the tenders received are less in value than R500 000 or exceed R500 000 and the tender document stipulated that the 80/20 or 90/10 preference point system is applicable and that the tenders received do not fall within/or exceed the said amount, whichever is applicable, the said tender must be cancelled and re-advertised. The section 10 reads as follows:
- (1) *In the event that, in the application of the 80/20 preference point system as stipulated in the tender documents, all the tenders receive are equal or below R500 000-00, the tender invitation must be cancelled.*
  - (2) *in the event that, in the application of the 90/10 preference point system as stipulated in the tender documents, all the tenders and must, in the tender documents, stipulate the preference point system to be applied.*
  - (3) *An organ of state, which has cancelled a tender invitation as contemplated in sub-regulation (1) and (2) must re-invite tenders and must, in the tender documents, stipulate the preference point system to be applied.*
  - (4) *An organ of state may, prior to the award of a tender, cancel a tender if –*
    - a) *due to changed circumstances, there is no longer need for the goods or services tendered for (it may be read into this sub-section that there exist no longer a need to sell or lease the assets).*
    - b) *funds are no longer available to cover the total envisaged expenditure; or*
    - c) *no acceptable tenders are received.*
- Please note that only sub-section 4(c) is applicable to immovable property.
11. Section 12(8) of the regulations further provide for a mechanism to break any deadlock in tenders in the event of two or more tenderers having scored an equal amount of points.
  12. The successful tenderer will be the one who scored the highest number of preference points for specific goals. Should two or more tenderers however be equal in all respects the award shall be decided by the drawing of lots.



## **8. METHOD OF SALES**

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

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

### **8.1 Public Tender Method**

Council shall, in a case where there is an available piece of land to be alienated, place a notice on a local or national newspaper inviting for public to tender. Upon receipts of applications tenders received are then referred to the procurement Tender Committee for adjudication.

The Procurement Tender Committee will recommend and motivate to the Executive Committee as to why the selected candidate is found suitable. The Executive Committee will submit a to Council for final decision. A 10% deposit is payable by the successful tenderer upon signing of the deed of sale subject to the balance payable within a period of 30 days from the signing of the Deed of Sale.

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

### **8.2 Public Auction Method**

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

### **8.3. Sale of land to the HDI's**

In order to avoid camouflaging (fronting) of the historically disadvantaged Individuals more especially blacks, the purchaser will be restricted to change ownership of the application property within a period of ten (7-10) years.

### **8.4 Data Base Registration**

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

The sites then get sold on a first in first out bases using the data base. The sites get sold on cash basis, bank guarantee or 10% deposit plus three months period to settle the balance.

## **8.5 Business Proposals**

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

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

## **9 Valuation of Council Property.**

### **9.1 Determination of selling price**

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

All valuations are done in terms of the following principles:

#### **Title deed information**

- Full description of the property
- Size
- Registered owner/s
- Purchase date
- Purchase price
- Date of registration
- Existing bonds
  - Limitations (including servitudes, conditions and any endorsements or caveats)
  - Minerals rights
  - Local government information

- Town Planning Information – (including zonings, rights and other use restrictions)
- Municipal Valuations
- Rates& Taxes payable

#### Physical description

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

#### Market identification

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

#### Applications of comparables

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

### Conclusion

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

## **9.2 Exceptions to the market related prices**

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

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

The council may therefore in terms of the said Act and also in terms of section 79 18(e) of the Local Government Ordinance 1939, (Ordinance 17 of 1939) dispose of immovable property at a price below the market value subject to a Council resolution to do so. The following categories are proposed as such circumstances.

## **10 Small, medium and micro enterprises (SMME)**

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

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

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

## **11 Non-government organizations, sports clubs and other non-profit- making organizations and community co-operatives (BEE status)**

An application to purchase/lease Council land by NGO's sports and other non-profit making organizations for non-profit purposes, shall by means of a comprehensive report, be referred to Council for consideration. Consideration will be given by Council for requests to purchase/lease same at a nominal or market related price/rental amount as these organizations contribute to the rendering of community service.

## 12 Organs of state

In terms of section 239 of the Constitution of the Republic of South Africa, 1996 (Act 106 of 1996), an Organ of State is defined as follows:

Organ of state means-

- (a) any department of state or administration in the national, provincial or local sphere of government; or
- (b) any other functionary or institution-
  - (i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
  - (ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;

It is therefore suggested that for the sake of promoting good governance and inter-governmental, relations, the alienation (sale or lease) of immovable Council properties, to an organ of state, be exempted from the tender procedure.

## 9. IMPLEMENTATION OF THE POLICY

**The policy is to be implemented in conjunction with other relevant Council policies and strategies including the following:**

- ☐ Ba-Phalaborwa Municipality's Integrated Development Plans
- ☐ Ba-Phalaborwa Town Planning Schemes,
- ☐ Ba-Phalaborwa Municipality's Housing and Spatial Development Framework
- ☐ Supply Chain Management Policy

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

## **10. EFFICIENCY OF POLICY OPTION IN ACHIEVING THE VALUES**

### **10.1 Public Tender Method**

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

### **10.2 Evaluation of Tender**

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

### **10.3 Data Base Registration**

The sites get sold on a first in first out bases using the database. The sites get sold on cash basis, bank guarantee or 10% deposit plus three months period to settle the balance. The disadvantage of this method is that, it does not favour the HDI's (Historically Disadvantaged Individuals) in the sense that individuals are required to have settled the account within three months period.

### **10.4 Public Auction Method**

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

### **10.5 Business Proposals**

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

## **11. VALUATION OF PROPERTY**

Council shall appoint a Professional Valuer who will determine the fair market value of all the identified properties, and this person must be an independent Professional Valuer or Professional associated Valuer registered in terms of the Property Professional Act, 2000 (Act 47 of 2000) or any ensuing act of the cost of the purchaser

## **12. DEVIATION FROM THE ZONING**

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

## **13. CONDITIONS OF SALE**

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



- 13.8 The buyer is expected to have constructed the applicable structure within a period not exceeding twelve (12) month.
- 13.9 council has the power to repossess the application property should the buyer fail to comply to the conditions of sale.

#### 14. DELEGATION

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

#### 15. CONCLUSION

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

### APPENDIX 1

#### 16. SOURCES AND REFERENCES

- 20.1 <http://www.gov.ns.ca/tpb/manuals/PDF/300/30308-13.PDF> “Real Property Disposal Policy” (10/06/2006)
- 20.2 <http://www.pueblo.gsa.gov/cic-text/fed-prog/landsale/landForSale.html> “Are There any Public Lands For Sale?” 10/06/2006
- 20.3 <http://www.fairfaxcounty.gov/parks/parkpolicy307.htm> “Policy 307 Disposal of Land or Facilities” 10/06/2006
- 20.4 <http://www.adelaidecitycouncil.com/council/publications/Policies/Sale-and-Disposal> “ Sale and Disposal of Land and other Assets Policy” 10/06/2006
- 20.5 [http://www.capegateway.gov.za/Text/2006/4/policy-assets-management-index&\\_policy.pdf](http://www.capegateway.gov.za/Text/2006/4/policy-assets-management-index&_policy.pdf) “ Assets Management Policy Management and Administration of Immovable” 10/06/2006
- 20.6 <http://www.localgovt.sa.gov.au/pdf/public-consult-new.pdf>. “Public Participation-Schedule of Requirements” 10/06/2006
- 20.7 City of Tshwane “POLICY IN RESPECT OF ALIENATION OF IMMOVABLE COUNCIL PROPERTY” 28/10/2004