

Policy

1. INTRODUCTION

The land policy of the Ethekwini Municipality has required adjustments and amendments in line with the Vision and Integrated Development Plan of the Ethekwini Municipality.

This document is the product of a series of deliberations of working groups convened to identify policy issues and options for amendment, the amending legal framework within which the Ethekwini Municipality conducts its responsibilities, the guidance of the Municipality itself and the administration serving it.

2. KEY PRINCIPLES UNDERPINNING LAND POLICY

A set of principles and values, which underpin land affairs policy, has been critical in guiding the process of policy formulation as well as its application.

Thus, land affairs policy should aim to:-

- a. ensure an equitable, flexible and transparent policy which enables the efficient performance of appropriate land transactions to serve the diverse needs of the Ethekwini Municipality's Departments and communities
- b. establish mechanisms for consulting with role-players and co-ordinating land transactions
- c. act in support of:-
 - i. development - land, economic, infrastructure and/or housing,
 - ii. land use - a town planning scheme, land information system.
 - iii. community needs, and
 - iv. rates systems

To fulfil this aim the policy should:-

- a. be equitable
- b. be flexible
- c. enable efficient transactions to reduce bureaucracy
- d. ensure appropriate land transactions
- e. serve the needs of the Ethekwini Municipality's Departments and communities
- f. encourage consultation with role-players
- g. ensure co-ordinating with role-players

3. KEY VALUES AND ISSUES

- a. The new and evolving land affairs policy for Ethekwini Municipality must be informed by the legal and constitutional context within which Municipalities are operating. This is critical. Since the Constitution is the supreme law of the land it is such that for every decision of each sphere of government to be valid it has, ultimately, to be consistent with

the Constitution.

Against this is the reality that land is affected by a plethora of legislation, exacerbated by that specifically introduced in support of apartheid aims, leaving a duality of systems that the Ethekewini Municipality has now inherited.

- b. The Ethekewini Municipality 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 and spatial integration.

Land assets unrelated to these purposes are, by implication, surplus to municipal requirements although future requirements of the Ethekewini Municipality must be acknowledged and hence the need to hold property in reserve.

- c. The Ethekewini Municipality has a responsibility in terms of acquiring, managing, developing and releasing its real estate holdings and rights on behalf of its residents and ratepayers.

The key consideration is that the best interests of the Ethekewini Municipality (and thus their residents) rather than individuals should be paramount in all real estate transactions that the Ethekewini Municipality enters into. This demand that, in all transactions that the Ethekewini Municipality enters into, there should be maximum benefit to the Ethekewini Municipality, their operational requirements and the broader community.

- d. Certain interventions are regularly necessary in land transactions perused by the Ethekewini Municipality as compared to those of the private land the property market. As the private market is solely concerned with maximising capital gain, as against the collective role of the Ethekewini Municipality in acting in the best interest of its citizens, it follows that the Ethekewini 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 might need to be acknowledged in terms of future transactions.

- e. Land and buildings affect the Ethekewini Municipality's entire organisation and straddles all Units and Committees of the Municipality. Therefore, land affairs policy must act in support of sectorial policies such as economic development; environment; land use; housing; social and community infrastructure; physical infrastructure; and culture and recreation.

- f. Market forces will always be the point of departure in any land or property transaction and this must therefore be recognised and acknowledged.

- g. 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.

- h. The Ethekewini Municipality in subscribing to affirmative action principals, must incorporate these principles within their real estate policy to redress practices in the past.

4. PRINCIPLES

From the aims of land affairs policy as articulated above, it is possible to isolate the following principles as cardinal to the whole process of developing and applying new policy:-

- a. Efficiency
 - less unnecessary bureaucratic red tape
 - timeous decision-making
 - proper record systems
 - economies of scale

- b. Effectiveness
 - quality of decisions
 - public benefit
 - cost-benefit analysis
 - decision risk

- c. Sustainability
 - continuity
 - financially a viable position
 - durability
 - affordability

- d. Democracy
 - consultation
 - engagement of stakeholders
 - participation
 - accountability
 - transparency
 - accessibility

- e. Co-operation & Co-ordination
 - with municipal departments
 - Inter-governmental
 - Extra-governmental

- f. Redress
 - levelling the playing field

- g. Equity
 - fairness
 - justice
 - equality

- h. Flexible and dynamic
 - less rigidity
 - adaptability and changing with times

- i. Developmental
 - internal
 - external

5. ACCOUNTS WITHIN WHICH LAND ASSETS ARE HELD

- a. Public Improvement Fund land refers to land generally purchased with municipal funds. In the context of this policy document, it is a fixed asset which is now not directly required for municipal purposes or programmes although its release could act in support of such a municipal programme, as shown in 2c. above.

- b. Housing Fund land is that which was acquired through State loans and finance in support of past housing initiatives founded upon apartheid policies of the then government.

Accordingly the then Housing Development Acts (No.2,3 and 4 of 1987) previously prescribed how transactions would take place and gave little or no flexibility. It is recorded that this legislation was repealed by the Housing Act (No. 107 of 1997).

6. GEOGRAPHIC SCOPE OF POLICY

Whilst previously policy was geographically differentiated, the policy posited hereunder applies universally within the Ethekewini Municipality. Reference is made however within the policy framework for the need to recognise areas of specific focus or areas requiring special attention.

7. LAND ALIENATION POLICY

a. Residential land

i. Land incapable of development on its own:-

- (1) Will be offered by private treaty to the respective adjoining owner;
- (2) Will be priced at market value
- (3) Will be offered in Freehold title
- (4) Each transaction will be subject to a R5000 rebate, or such other amount as may be approved by the Ethekewini Municipality from time to time
- (5) It is recorded that the authority of the Premier will be necessary to give effect to (4) above.
- (6) The purchaser will be responsible for any and all costs associated with the possible relocation of services, rezoning, survey, registration and transfer

The creation of free-standing lots will in each instance be the preference of the Ethekewini Municipality in order that new residential opportunities be created.

ii. Land capable of development in its own right (Public Improvement Fund Assets)

- (1) Will be offered by public competition (tender)
- (2) Will be subject to an upset price that is market related
- (3) Will, within certain pricing cohorts (as determined by the Ethekewini Municipality from time to time) be allocated to take account of persons who might have been previously disadvantaged. Tender procedures will be utilised in such instances.
- (4) Will be offered in freehold title

iii. Land capable of development in its own right (Housing Fund Assets)

- (1) (NOTE:- Bulk land parcels will only be released if not identified by the Executive Director : Metro Housing for that Service Unit's programmes)

iv. Land not surplus to the Ethekewini Municipalities' requirements but not immediately required (These are typically properties that have been acquired for a capital project which has yet to commence)

- (1) The property will be offered on a short-term tenancy basis
- (2) The rental will be at a market rate, unless determined otherwise by the Ethekewini Municipality.
- (3) The property will be offered by private treaty.

b. Commercial and Industrial Land

i. Land incapable of development on its own:-

- (1) Will be offered by private treaty to the respective adjoining owner
- (2) Will be priced at market value
- (3) The purchaser will be responsible for any and all costs associated with the possible relocation of services, rezoning, survey, registration and transfer

(4) Will be offered in freehold title.

ii. Land capable of development on its own right:-

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

(2) Will be subject to an upset price that is market related

(3) Might be subject to conditions in support of certain desires or programmes of the Municipality

(a) Land might be located within an area of specific focus or be subject to a specific developmental or social programme.

(b) In such instances the maximisation of return will not necessarily be the determinant factor

(c) In such instances, the desires of the Ethekewini Municipality will be clearly articulated through a tender process

(d) will be subject to development clauses to ensure that the Ethekewini Municipality's aims are achieved.

(4) Will, within certain pricing cohorts (as determined by the Ethekewini Municipality from time to time) be allocated to take account of persons who might have been previously disadvantaged. Tender procedures will be utilised in such instances.

(5) Will be offered in freehold title

(6) Might be offered in leasehold title to achieve certain desires or to overcome specific constraints, as might be the situation from a site and/or time specific point of view.

iii. 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)

(1) The property will be offered on a short-term tenancy basis. The notice period will vary based on when the properties will be required.

(2) The rental will be at a market rate, unless determined otherwise by the Ethekewini Municipality.

(3) The tenancy will be offered via public competition

(4) An agreement concluded by private treaty will occur in instances:-

(a) where there is no known demand for the site

(b) where it can only be utilised by the adjoining property owner

iv. Multi-tenanted premises

(1) A fixed, 3 to 5 year period will be offered in keeping with normal business practice.

(2) Leases of the fixed period will be offered by private treaty.

c. Social Sites (Worship, Creche & Institutional)

i. Public Improvement Fund Assets

(1) Will be offered by public tender

(2) 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.

(3) Will be subject to a predetermined price that is market related, or as may be determined by Ethekewini Municipality

(4) Will be offered in freehold title

ii. Housing Fund Assets

(1) Will be offered by public tender

(2) 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.

(3) Will be subject to a predetermined price:-

(a) that is market related, or as may be determined by the EtheKwini Municipality, in instances where the EtheKwini Municipality has discharged its obligations, by having already provided a minimum number of sites to service the reasonable needs of the community.

(b) that is determined on a formula based on cost price of the land, in instances where the minimum number of sites have yet to be provided

(i) will be subject to development clauses to ensure discharge intentions

(4) Will be offered in freehold title

d. Sporting Bodies

i. Amateur Bodies providing sporting opportunities of a nature as may be approved by the EtheKwini Municipality from time to time. In this regard not all sport activity, notwithstanding its possible amateur status, is recognised as a responsibility of the EtheKwini Municipality. The EtheKwini 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:-

(1) Land will be offered in an open process

(2) Will be offered on a leasehold title basis

(3) Will restrict the lessee to an amateur status

(4) Will be subject to development clauses to ensure the discharge of intentions

(5) Rental will be established on the basis of:-

(a) a nominal rental for the total land component on the lease as may be approved by the EtheKwini Municipality from time to time

together with,

(b) 50% of the actual market value of the land occupied by any building development undertaken by the Body, such percentage being determined by the EtheKwini Municipality from time to time

(c) will not be liable for rates

(d) but will be responsible for the costs of services consumed

(6) Will be subject to conditions to allow the EtheKwini Municipality, through its relevant Department/s, to utilise the grounds, subject to further terms and conditions as agreed by the Lessee and the EtheKwini Municipality.

(7) Will preclude discrimination

(8) Will recognise that EtheKwini Municipality has a limited responsibility in terms of providing for sporting and recreational opportunities

(9) Will ensure that the EtheKwini 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

(10) Where existing facilities are being taken over, will recognise the asset value of development already existing, whether this has been directly funded by the EtheKwini Municipality or not.

ii. The professionalisation of 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 Ethekekwini 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 agreement with amateur bodies in terms of the rental that would be payable.

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

(a) The contribution the organisation makes to the City and that sporting code will be taken into account in considering the appropriate percentage.

(2) The organisation will be responsible for rates

e. Any transaction with Provincial or National Government

i. Will be undertaken on a private treaty basis

ii Be at full market value

iii Will be offered, in preference, in freehold title

Amended as per resolution of the Land Affairs & Housing Committee on 2 March 2000