SIYATHEMBA MUNICIPALITY

ASSET MANAGEMENT POLICY
JUNE 2010

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INDEX

ASSET MANAGEMENT POLICY FOR THE SIYATHEMBA MUNICIPALITY

1 INTRODUCTION

This Policy for the management of assets has been designed to assist management and officials of the Siyathemba Municipality with the description of management procedures for Property, Plant and Equipment, Investment Property, Agricultural Assets and Intangible Assets. It also should assist with the capacity to differentiate between activities, which are acceptable in terms of general authorization, supervisory responsibilities and limits of authority to the management of assets and functions of the organisation.

This Policy will provide certainty with respect to the handling of asset management procedures undertaken within the organization and will ensure that management and employees understand their respective responsibilities and duties.

For the purpose of this policy, assets exclude inventory and monetary assets such as debtors.

This Policy replaces all asset management procedures/instructions and memoranda that have been previously issued.

2 OBJECTIVE OF THIS POLICY

- To ensure the effective and efficient control, utilization, safeguarding and management of the Municipality's assets.
- To ensure managers are aware of their responsibilities in regards of assets.
- To set out the standards of physical management, recording and internal controls to ensure assets are safeguarded against inappropriate loss or utilization.

3 DEFINITIONS

Accounting officer means the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and being the head of administration and accounting officer in terms of section 60 of the Local Government: Municipal Systems Act 2000 (Act No. 32 of 2000).

Agricultural Activity is the management by an entity of the biological transformation of biological assets for sale, into agricultural produce, or into additional biological assets.

Agricultural Produce is the harvested product of the entity's biological assets.

Amortisation is the systematic allocation of the depreciable amount of an intangible asset over its useful life.

Asset categories are the six main asset categories defined as follows:

- **Infrastructure assets** – are defined as any asset that is part of a network of similar assets. Examples are roads, water reticulation schemes, sewage purification and trunk mains, transport terminals and car parks.

- **Community assets** – are defined as any asset that contributes to the community's well-being. Examples are parks, libraries and fire stations.

- **Heritage assets** – are defined as culturally significant resources. Examples are works of art, historical buildings and statues.

- **Investment properties** – are defined as properties that are acquired for economic and capital gains. Examples are office parks and under-developed land acquired for the purpose of resale in future years.

- **Intangible assets** – are identifiable assets without physical substance.

- **Other assets** – are defined as assets utilized in normal operations. Examples are plant, equipment, motor vehicles and furniture and fittings.

A Biological Asset is a living animal or plant.

Assets are resources controlled by the municipality as a result of past events and from which future economic benefit or service potential are expected to flow. However for the purpose of this policy exclude inventory and other monetary assets.

Biological Transformation comprises the processes of growth, degeneration, production and procreation that cause qualitative or quantitative changes to a biological asset.

Carrying amount is the amount at which an asset is recognized after deducting any accumulated depreciation and accumulated impairment losses.

Chief Financial Officer means an officer of a municipality designated by the municipal manager to be administratively in charge of the budgetary and treasury functions.

Class of property, plant and equipment means a grouping of assets of a similar nature or function in a municipality's operations that is shown as a single item for the purpose of disclosure in the financial statements.

Commercial service means a service other than a municipal service –

(a) rendered by a private sector party or organ of state to or for a municipality or municipal entity on a commercial basis; and
(b) which is procured by the municipality or municipal entity through its supply chain management policy.

Community assets are defined as any asset that contributes to the community's well-being. Examples are parks, libraries and fire stations.

Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire an asset at the time of its acquisition or construction or where applicable, the amount attributed to that asset when initially recognized in accordance with the specific requirements of Standards of GRAP.

Depreciable amount is the cost of an asset, or other amount substituted for cost in the financial statements, less its residual value.

Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life.

Depreciated replacement cost, in relation to a capital asset, means an amount equivalent to the cost to replace the capital asset on the date of transfer adjusted by a deemed depreciated cost at the date of the transfer taking into account the age and condition of the asset.

Disposal, in relation to a capital asset, includes –

(a) the demolition, dismantling or destruction of the capital asset; or
(b) any other process applied to a capital asset which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership.

Disposal management system means the system contemplated in regulation 40 of the Municipal Supply Chain Management Regulations, published by General Notice No. 868 of 2005.

Encumbrance, in relation to a capital asset, means a right to the capital asset that is held by a third party that limits the owner's use of the asset.

Exempted capital asset means a municipal capital asset which is exempted by section 14(6) or 90(6) of the Act from the other provisions of that section.

Fair value is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

GRAP is Standards of Generally Recognised Accounting Practice

High value, in relation to a capital asset of a municipality or municipal entity, means that 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 or municipal entity, as determined from the latest audited annual financial statements of the municipality or entity; or
(c) an amount determined by resolution of the council of the municipality or of the parent municipality of the municipal entity which is less than (a) or (b).

Heritage assets are defined as culturally significant resources. Examples are works of art, historical buildings and statues.

Historical cost means the original purchase price or cost of acquisition of the capital asset at the time the asset was acquired

An ***impairment loss*** of a cash generating asset is the amount by which the carrying amount of an asset exceeds its recoverable amount.

An ***impairment loss*** of non-cash generating asset is the amount by which the carrying amount of an asset exceeds its recoverable service amount.

Infrastructure assets are defined as any asset that is part of a network of similar assets. Examples are roads, water reticulation schemes, sewerage purification and trunk mains, transport terminals and car parks.

Intangible assets are identifiable non-monetary assets without physical substance.

Investment properties are defined as property (land or a building-or part of a building-or both) held (by the owner or by lessee under a finance lease) to earn rentals or for capital appreciation or both, rather than for:

(a) use in the production and supply of goods or services or for administrative purposes; or
(b) sale in the ordinary course of business.

Long term means a period of longer than three years.

Municipal valuation means the official valuation of an immovable property as reflected in the Municipality's valuation roll.

Municipal capital asset means a capital asset of which a municipality or municipal entity is the owner.

Municipal service has the same meaning as assigned to it in section 1 of the Municipal Systems Act.

Non-exempted capital asset means a municipal capital asset which is not exempted by section 14(6) or 90(6) of the Act from the other provisions of that section.

Organ of state means –

(a) a national department or national public entity;
(b) a provincial department or provincial public entity;
(c) a municipality or municipal entity; or
(d) any other organ of state within the meaning assigned to "organ of state" in section 239 of the Constitution.

Private sector party means a person who is not an organ of state.

Prescribe means as prescribed by the Minister of Finance by regulation.

Other assets are defined as assets utilized in normal operations. Examples are plant and equipment, motor vehicles and furniture and fittings.

Property, plant and equipment are tangible assets that:-

- 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
- are expected to be used during more than one period.

Realisable value means the amount of cash or cash equivalents that could currently be obtained by transferring the capital asset, less the estimated cost of completion and the estimated costs necessary to make the transfer.

Recoverable amount is the higher of a cash-generating asset's net selling price and its future value in use.

Recoverable service amount is the higher of a non-cash-generating asset's fair value less costs to sell and its future value in use.

Residual value of an asset is the estimated amount that an entity would currently obtain from disposal of the asset, after deducting the estimated costs of disposal, if the asset were already of the age and condition expected at the end of its useful life.

Right to use, control or manage means a right to use, control or manage the capital asset for a period exceeding one calendar month without ceding legal ownership in the asset. In other words, where the granting of such rights do not amount to the transfer or permanent disposal of the asset, for example when a right is acquired through a leasing, letting or hiring out arrangement.

Senior Management means officials who are responsible for managing the respective votes of the municipality and to whom powers and duties for this purpose have been delegated in terms of section 79 of the MFMA.

***Service provider* –**

(a) in relation to a municipal service, means a private sector party or organ of state appointed by a municipality in terms of Chapter 8 of the Municipal Systems Act to perform a municipal service in accordance with that Act; or
(b) in relation to a commercial service, means a private sector party or organ of state appointed in terms of the supply chain management policy of a municipality or municipal entity to render a commercial service to or for the municipality or entity as an independent contractor.

Subsidiary asset means an asset that forms an integral part of the capital asset or of the operation or maintenance of the asset.

Supply chain management policy means the supply chain management policy which a municipality or municipal entity is required to have in terms of Chapter 11 of the Act.

The Act means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

Transfer, in relation to a capital or subsidiary asset, means transfer of ownership in the asset as a result of a sale or other transaction.

***Useful life* is:-**

- the period of time over which an asset is expected to be used by the municipality; or
- the number of production or similar units expected to be obtained from the asset by the municipality’s accounting officer.

4 BACKGROUND

The utilization and management of property, plant and equipment, investment property, intangible assets and agricultural assets is the prime mechanism by which the Municipality can fulfil its constitutional mandates for:-

- Delivery of sustainable services;
- Social and economic development;
- Promoting safe and healthy environments; and
- Fulfilling the basic needs to the community.

As trustees on behalf of the local community, the Municipality has a legislative and moral obligation to ensure it implements policies to safeguard the monetary value and future service provision invested in assets.

The policy for the management of assets deals with the Municipal rules required to ensure the enforcement of appropriate stewardship of assets. Stewardship has two components being the:-

- Financial administration by the Chief Financial Officer; and
- Physical administration by the relevant managers.

Statutory provisions are being implemented to protect public property against arbitrary and inappropriate management or disposals by local government.

Accounting standards have been approved by the Accounting Standards Board to ensure the appropriate financial treatment for property, plant and equipment, investment property, intangible assets and agricultural assets. The requirements of these new accounting standards include:-

- The compilation of asset registers covering all assets controlled by the Municipality.
- Accounting treatment for the acquisition, disposal, recording and depreciation / amortisation of assets.
- The standards to which financial records must be maintained to comply with the new accounting standards.

5 DELEGATION OF POWERS

This policy should be applied with due observance of the Municipality's policy with regard to delegated powers. Such delegations refer to delegations between the Municipal Manager and other responsible officials as well as between the Council and the Executive Mayor and the Council and the Municipal Manager. All delegations in terms of this policy must be recorded in writing.

In accordance with the Local Government: Municipal Finance Management Act (Act 56 of 2003) (MFMA), the Municipal Manager is the accounting officer of the Municipality and therefore all designated officials are accountable to him/her. The Municipal Manager is therefore accountable for all transactions entered into by his/her designates.

The overall responsibility of asset management lies with the Municipal Manager. However, the day to day handling of assets should be the responsibility of all officials in terms of delegated authority reduced in writing.

6 PURPOSE OF THE POLICY

The purpose of this policy is to ensure that proper management of assets forms part of the financial management procedures of the Siyathemba Municipality and to ensure that prudent asset management procedures are applied consistently.

7 EFFECTIVE ASSET MANAGEMENT

7.1 Responsibilities

The Municipal Manager is responsible for the management of the assets of the Municipality, including the safeguarding and the maintenance of those assets. He/she must ensure that:-

- The Municipality has and maintains a management, accounting and information system that accounts for the assets of the Municipality.
- The Municipality's assets are valued in accordance with standards of Generally Recognized Accounting Practice (GRAP).
- The Municipality has and maintains a system of internal control of assets, including an asset register.
- Senior managers and their teams comply with this policy.

The Chief Financial Officer is responsible to the Municipal Manager to ensure that the financial investment in the Municipality's assets is safeguarded and maintained. He/she may delegate or otherwise assign responsibility for performing these functions but he/she will remain accountable for ensuring that these activities are performed. He/she must ensure that:-

- Appropriate systems of financial management and internal control are established and carried out diligently.
- The financial and other resources of the Municipality assigned to him/her are utilized effectively, efficiently, economically and transparently.
- Any unauthorized, irregular or fruitless or wasteful expenditure, and losses resulting from criminal or negligent conduct, are prevented.
- The systems, processes and registers required to substantiate the financial values of the Municipality's assets are maintained to standards sufficient to satisfy the requirements of effective management.
- Financial processes are established and maintained to ensure the Municipality's financial resources are optimally utilized through appropriate asset plan, budgeting, purchasing, maintenance and disposal decisions.
- The Municipal Manager is appropriately advised on the exercise of powers and duties pertaining to the financial administration of assets.
- The senior managers and senior management teams are appropriately advised on the exercise of their powers and duties pertaining to the financial administration of assets.

The Functional Managers must ensure that:-

- Appropriate systems of physical management and control are established and carried out for assets in their area of responsibility.
- The Municipal resources assigned to them are utilized effectively, efficiently, economically and transparently.
- Any unauthorized, irregular or fruitless or wasteful utilization and losses resulting from criminal or negligent conduct are prevented.
- Their management systems and controls can provide an accurate, reliable and up to date account of assets under their control.
- They are able to justify that their plans, budgets, purchasing, maintenance and disposal decisions for assets optimally achieve the Municipality's strategic objectives.

The functional managers may delegate or otherwise assign responsibility for performing these functions but they will remain accountable for ensuring that these activities are performed.

7.2 Asset Register

<u>Establishment and Management of the Register of Assets</u>

The Chief Financial Officer will establish and maintain the Register containing key financial data on each item of Property, Plant or Equipment, Investment Property, Intangible Assets and Agricultural Assets that satisfies the criterion for recognition.

Functional Managers are responsible for establishing and maintaining any additional register or database required to demonstrate their physically management of their assets.

Each functional manager is responsible to ensure that sufficient controls exist to substantiate the quantity, value, location and condition of all assets in their registers.

Contents of the Asset Register

- The measurement based used (Cost or Fair Value);
- The depreciation methods used;
- The original useful live;
- The revised useful live;
- The residual value;
- Depreciation charged for the period;
- The accumulated depreciation;
- The gross carrying amount;
- Date of acquisition;
- Date of disposal (if applicable);
- Increases or the decreases resulting from revaluations (if applicable);
- Date of last revaluation;
- Method of calculating recoverable amount (when impairment tests are required in terms of GRAP);
- Any restrictions on title to the asset;
- Location;
- Source of finance;
- Condition of the asset;
- Method of calculating the recoverable amount (when impairment losses are required in terms of GRAP);
- Strategic purpose and if it is required to provide minimum basic services; and
- Responsible Functional Manager/ department/ vote.
- Impairment losses incurred during the financial year (and the reversal of such losses, where applicable)
- Whether the asset is required to perform basic municipal services
- Whether the asset has been used to secure any debt, and – if so - the nature and duration of such security arrangements
- The title deed number, in the case of fixed property

7.3 Classification of Assets

In compliance with the requirements of the National Treasury, the Chief Financial Officer shall ensure that all assets are classified under the following headings in the Fixed Assets Register, and Heads of Departments shall in writing provide the Chief Financial Officer with such information or assistance as is required to compile a proper classification:-

7.3.1 Property, Plant and Equipment

- Land (not held as investment assets).
- Infrastructure assets (assets which are part of a network of similar assets).

- Community assets (assets contributing to the general well-being of the community).
- Heritage assets (culturally significant assets).
- Other assets (ordinary operational assets).
- Housing (rental stock or housing stock not held for capital gain).

7.3.2 Investment Property

Investment assets (resources held for capital or operational gain and which are not used by the Municipality). Properties occupied by the Municipality, Councilors or officials are classified as owner-occupied property and are therefore not classed as investment property

Investment properties will be treated in accordance with IFRS 40 and will separately be classified in the Statement of Financial Position. Investment properties will not be depreciated but will annually be revalued.

7.3.3 Intangible Assets

Intangible assets are identifiable non-monetary assets without physical substance.

Intangible assets will be treated in accordance with GRAP 102 and will separately be classified in the Statement of Financial Position. Intangible assets shall be valued at cost less any accumulated amortization and any impairment losses.

7.3.4 Agricultural Assets

Agricultural Assets will be treated in accordance with GRAP 101 and will separately be classified in the Statement of Financial Position

The Chief Financial Officer shall use the classifications indicated in the Annexure on estimated lives of assets, as a guideline and in the case of an item of assets not appearing in the Annexure shall use the classification applicable to the asset most closely comparable in the Annexure.

7.4 Depreciation

7.4.1 Depreciation of PPE

All PPE, except land and heritage assets, shall be depreciated – or amortised in the case of intangible assets.

Depreciation may be defined as the monetary quantification of the extent to which PPE is used or consumed in the provision of economic benefits or the delivery of services.

Depreciation shall generally take the form of an expense both calculated and debited on a annual basis against the appropriate line item in the department or vote in which the item of PPE is used or consumed.

However, depreciation shall initially be calculated from the day following the day in which an item of PPE is acquired or – in the case of construction works and plant and machinery – the day following the day in which the item is brought into use, until the end of the year concerned. Thereafter, depreciation charges shall be calculated annually.

Each Head of Department, acting in consultation with the Chief Financial Officer, shall ensure that reasonable budgetary provision is made annually for the depreciation of all applicable PPE controlled or used by the department in question or expected to be so controlled or used during the ensuing financial year.

The procedures to be followed in accounting and budgeting for the amortisation of intangible assets shall be identical to those applying to the depreciation of other PPE.

7.4.2 ***Rate of Depreciation and Amortisation***

The Chief Financial Officer shall assign a useful operating life to each depreciable item of PPE recorded on the Municipality's asset register. In determining such a useful life the Chief Financial Officer shall use to the useful lives set out in the annexure to this document as a guideline.

In the case of an item of PPE which is not listed in this annexure, the Chief Financial Officer shall determine a useful operating life, if necessary in consultation with the Head of Department who shall control or use the item in question, and shall be guided in determining such useful life by the likely pattern in which the item's economic benefits or service potential will be consumed.

The procedures to be followed in accounting and budgeting for the amortisation of intangible assets shall be identical to those applying to the depreciation of other PPE.

7.4.3 ***Method of Depreciation***

The Chief Financial Officer shall allocate the depreciable amount of all depreciable PPE and intangible on a systematic basis over its useful life.

The residual value and useful life of an asset shall be reviewed at least at each reporting date and, if expectations differ from previous estimates, the changes shall be accounted for as a change in accounting estimate in accordance with GRAP 3.

7.5 Amendment of Asset Lives and Diminution in the Value of PPE

Only the Chief Financial Officer may amend the useful operating life assigned to any PPE, and when any material amendment occurs the Chief Financial Officer shall inform the Council of such amendment.

The Chief Financial Officer shall amend the useful operating life assigned to any item of PPE if it becomes known that such item has been materially impaired or improperly maintained to such an extent that its useful operating life will not be attained, or any other event has occurred which materially affects the pattern in which the item's economic benefits or service potential will be consumed.

If the value of an item of PPE or intangible assets has been diminished to such an extent that it has no or a negligible further useful operating life or value such item shall be fully depreciated or eradicated in the financial year in which such diminution in value occurs.

Similarly, if an item of PPE has been lost, stolen or damaged beyond repair, it shall be fully depreciated in the financial year in which such event occurs, and if the item has physically ceased to exist, it shall be written off in the fixed asset register.

In all of the foregoing instances, the additional depreciation expenses shall be debited to the department or vote controlling or using the item of PPE or itangible asset in question.

If any of the foregoing events arises in the case of a normally non-depreciable item of PPE, and such item has been capitalised at a value other than a purely nominal value, such item shall be partially or fully depreciated, as the case may be, as though it were an ordinary depreciable item of PPE, and the department or vote controlling or using the item in question shall bear the full depreciation expenses concerned.

Additional depreciation not budgeted for as a result of unforeseeable or unavoidable circumstances must be provided for in an adjustments budget and, if such circumstances arises close to the end of the financial year and there will not be time for Council to consider the adjustments before the end of the financial year, may in advance be approved by the Mayor in terms of Section 29 of the MFMA, provided that any other provisions of the MFMA be complied with.

7.6 Funding of PPE and Reserves

The purchase of assets may be funded from the raising of external loans, leases, government- and public contributions, the Capital Replacement Reserve and surplus cash.

The Chief Financial Officer shall ensure that in respect of all assets financed from grants or subsidies or contributions received from other spheres of government or from the public at large, as well as in respect of fixed assets donated to the Municipality, a government grants reserve or public contribution reserve for future depreciation is created equal in value to the capitalised value of each item of asset in question.

The Chief Financial Officer shall thereafter ensure that in the case of depreciable PPE an amount equal to the annual depreciation expenses of the items concerned are transferred each year from such reserve to the Municipality’s accumulated surplus.

7.7 Carrying Values of PPE and Intangible Assets

All PPE and intangible assets shall be carried in the asset register, and appropriately recorded in the annual financial statements, at their original cost or fair value less any accumulated depreciation or amortisation in the case of intangible assets.

The original cost of an item of PPE or intangible assets may include:

- Cost price;
- Financing costs (MFMA section 46(4));
- Import tax;
- Non-claimable purchase tax; and
- Any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.

When payment for an item of PPE or intangible assets is deferred beyond normal credit terms, its cost is the cash price equivalent. The difference between this amount and the total payments is recognized as an interest expense over the period of credit.

When an item of PPE is acquired to be exchanged or partly exchanged for a dissimilar item of PPE or other asset, the cost of such item is measured at the fair value of the asset received, which is equivalent to the fair value of the asset given up adjusted by the amount of any cash or cash equivalents paid additional. For the purpose hereof, “fair value” shall be determined by the council with due regard to the definition ascribed to fair value in paragraph 2 hereof.

The only exceptions to this rule shall be revalued items of PPE (see part 7.8 below) and heritage assets in respect of which no depreciation is recorded in the fixed asset register.

7.8 Revaluation of items of PPE

All land and buildings recorded in the Municipality’s asset register shall be revalued when the Council is of the opinion that economic conditions have had a substantial impact on the on the value of land and buildings within the municipal area. Under such circumstances a sworn valuer will be appointed to perform a valuation of all land and buildings.

The Chief Financial Officer shall adjust the carrying value of the land and buildings concerned to reflect in each instance the value of the items as recorded in the valuation roll, provided the Chief Financial Officer is satisfied that such value reflects the fair value of the land and buildings concerned.

The Chief Financial Officer shall also, where applicable, create a revaluation reserve for each such item equal to the difference between the value as recorded in the valuation roll and the carrying value of the item before the adjustment in question.

The buildings concerned shall thereafter be depreciated on the basis of its revalued amount, over its remaining useful operating life, and such increased depreciation expenses shall be budgeted for and debited against the appropriate line item in the department or vote controlling or using the buildings in question.

The Chief Financial Officer shall ensure that an amount equal to the difference between the new (enhanced) annual depreciation expense and the depreciation expenses determined in respect of such buildings before the revaluation in question is transferred each year from the revaluation reserve to the Municipality’s appropriation account. An adjustment of the aggregate transfer shall be made at the end of each financial year, if necessary.

If the amount recorded by the valuer is less than the carrying value of the item of land or buildings recorded in the fixed asset register, the Chief Financial Officer shall adjust the carrying value of such item by increasing the accumulated depreciation of the item in question by an amount sufficient to adjust the carrying value to the value as recorded by the valuer. such additional depreciation expenses shall form a charge, in the first instance, against the balance in any revaluation reserve previously created for such item, and to the extent that such balance is insufficient to bear the charge concerned, an immediate additional charge against the department or vote controlling or using the item of land or building in question

Revalued land and buildings shall be carried in the fixed asset register, and recorded in the annual financial statements, at their revalued amount, less accumulated depreciation (in the case of buildings)

7.9 Other Write-offs of PPE

An item of PPE, even though fully depreciated, shall be written off when it can no longer be used, in consultation with the Head of Department controlling or using the item concerned.

Every Head of Department shall report to the Chief Financial Officer on 31 October and 30 April of each financial year on any item of PPE which such Head of Department wishes to have written off, stating in full the reason for such recommendation.

The Chief Financial Officer shall consolidate all such reports, and shall promptly notify the Council on the PPE to be written off.

The only reasons for writing off PPE, other than the alienation of such item of PPE, shall be the loss, theft, and destruction or material impairment of the PPE in question.

If an item of PPE must be written off as a result of an occurrence out of the control of the municipality, such as malicious damage, theft or destruction, the municipal manager must determine whether a third party or an employee was involved in the loss and take all reasonable steps to recover such loss, including reporting the incident to the South African Police Services and the Auditor General, the insurance as well as institute disciplinary steps against any employee who might have been involved in such incident.

In every instance where a not fully depreciated item of PPE is written off, the Chief Financial Officer shall immediately debit to such department or vote, as additional depreciation expenses, the full carrying value of the item concerned.

7.11 Carrying Values of Investment Property

An investment property shall be measured initially at its cost. Transaction costs shall be included in the initial measurement. The cost of purchased investment property includes all directly attributable expenditure (professional fees for legal services, property transfer taxes and other transaction costs).

When payment for an investment property is deferred beyond normal credit terms, its cost is the cash price equivalent. The difference between this amount and the total payments is recognized as an interest expense over the period of credit.

When investment property is acquired to be exchanged or partly exchanged for a dissimilar investment property or other asset, the cost of such item is measured at the fair value of the asset received, which is equivalent to the fair value of the asset given up adjusted by the amount of any cash or cash equivalents paid additional. For the purpose hereof, “fair value” shall be determined by the council with due regard to the definition ascribed to fair value in paragraph 2 hereof.

After initial recognition investment property will be measured at fair value. A gain or loss arising from a change in fair value shall be recognized as a profit or loss in the Statement of Financial Performance in the period in which it arises. The fair value of investment property shall reflect market conditions at reporting date.

In terms of GRAP 16 transfers to and from investment property shall be made when there is a change in use:

(a) Commencement of owner-occupation, for a transfer from investment property to owner-occupied property;

(b) Commencement of development with a view to sale, for a transfer from investment property to inventories;
(c) End of owner-occupation, for a transfer from owner-occupied property to investment property; or
(d) Commencement of an operating lease to another party, for a transfer from inventories to investment property.

When an investment property is transferred to inventory or owner-occupied property, the property's deemed cost is the fair value of the property at the date of the change in use.

For a transfer from inventories to investment property, that will be carried at fair value, any difference between the fair value of the property at that date and its previous carrying amount shall be recognized in the Statement of Financial Performance.

7.11 Management and Operation of Assets

7.11.1 Accountability to manage assets

Each Functional Manager is accountable to ensure that Municipal resources assigned to them are utilized effectively, efficiently, economically and transparently. This will include:-

- Developing appropriate management systems, procedures, processes and controls for managing assets;
- Providing accurate, reliable and up to date account of assets under their control; and
- The development and motivation of relevant strategic asset management plans and operational budgets that optimally achieve the Municipality's strategic objectives.

7.11.2 Contents of a strategic management plan

Functional Managers need to manage assets under their control to provide the required level of service or economic benefit at the lowest possible long-term cost. To achieve this, the Functional Manager will need to develop strategic asset management plans that cover:-

- Alignment with the Integrated Development Plan;
- Operational guidelines;
- Performance monitoring;
- Maintenance programs;
- Renewal, refurbishment and replacement plans;
- Disposal and Rehabilitation plans;
- Operational, financial and capital support requirements, and
- Risk mitigation plans including insurance strategies

The operational budgets are the short to medium term plan for implementing this strategic asset management plan.

7.11.3 Reporting on Emerging Issues

Each Functional Manager should report to the Municipal Manager on issues that will significantly impede the item of asset capabilities to provide the required level of service or economic benefit.

7.11.4 Verification of Assets

The Municipality shall at least once during every financial year undertake on a date as determined by the CFO a comprehensive verification of all moveable assets controlled or used by all the departments of the Municipality.

Every Head of Department shall promptly and fully report in writing to the Chief Financial Officer, in the format determined by the Chief Financial Officer, all relevant results of such verification, provided that each such item of asset verification shall be undertaken and completed during 30 June of each financial year, and that the resultant report shall be submitted to the Chief Financial Officer not later than 30 June of the year in question.

7.11.5 Movement of Assets

Every Head of Department shall promptly and fully report in writing to the Chief Financial Officer, in the format determined by the Chief Financial Officer, all transfers from its original location of assets (including minor assets items) within 5 working days after transfer of such item.

7.12 Disposal of Assets

The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of assets needed to provide the minimum level of basic municipal services.

The Municipality may transfer ownership or otherwise dispose of assets other than one contemplated above, but only after the Council, in a meeting open to the public:-

- has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
- has considered the fair market value of the item and the economic and community value to be received in exchange for the asset.

The decision that a specific asset is not needed to provide the minimum level of basic municipal services, may not be subsequently reversed by the Municipality after that asset has been sold, transferred or otherwise disposed of.

The Municipal Manager may approve the disposal of an item of moveable assets, where the carrying value of such item of property, plant and equipment at the date of decision to dispose of the item, does not exceed R 50 000. The delegations to approve contracts for the disposal of an item of property, plant and equipment are stated in the Supply Chain Management Policy.

The disposal of assets must be fair, equitable, transparent, competitive and cost effective and comply with the prescribed regulatory framework for Municipal Supply Chain Management. The Supply Chain Management Policy covers these issues.

Transfers of assets to another Municipality, Municipal Entity, National Department or Provincial Department are excluded from these provisions and must be dealt with in accordance with the prescribed framework contemplated in Section 14(6) of the MFMA.

7.13 Capitalization

7.13.1 Capitalisation Criteria – Reinstatement, Maintenance and Other Expenses

Only expenses incurred in the enhancement of an asset (in the form of improved or increased services or benefits flowing from the use of such item) or in the material extension of the useful operating life of an asset shall be capitalised.

Expenses incurred in the maintenance or reinstatement of an asset shall be considered as operating expenses incurred in ensuring that the useful operating life of the item concerned is attained, and shall not be capitalised, taking into account International Financial Reporting Standards in respect of the expenses concerned.

Expenses which are reasonably ancillary to the bringing into operation of an asset may be capitalised as part of such item. Such expenses may include but need not be limited to import duties, forward cover-, transportation- , installation-, assembly- and communication costs.

7.13.2 Capitilisation

All capital expences will be recorded during the year in the General Ledger in suspence accounts. In the asset register expences will be recorded as work in progress. At the end of the financial year items in the asset register recorded as work in progress will be transferred as assets to the relevant cost centres. The suspence account in the general ledger will be credited and the the relevant asset votes debited. A reconciliation between the asset register and general ledger will be done on a monthly basis.

7.14 Maintenance

7.14.1 Maintenance Plans

Every Head of Department shall ensure that a maintenance plan in respect of every new infrastructure asset with a value of R100 000 (one hundred thousand rand) or more is promptly prepared and submitted to the Council for approval.

If so directed by the Municipal Manager, the maintenance plan shall be submitted to the Council prior to any approval being granted for the acquisition or construction of the infrastructure asset concerned.

The Head of Department controlling or using the infrastructure asset in question, shall annually report to the Council, not later than in July or the earliest Council meeting thereafter, of the extent to which the relevant maintenance plan has been complied with, and of the likely effect which any non-compliance may have on the useful operating life of the item concerned.

7.14.2 Deferred Maintenance

If there is material variation between the actual maintenance expenses incurred and the expenses reasonably envisaged in the approved maintenance plan for any infrastructure asset, the Chief Financial Officer shall disclose the extent of and possible implications of such deferred maintenance in an appropriate note to the annual financial statements. Such note shall also indicate any plans which the Council has approved in order to redress such deferral of the maintenance requirements concerned.

If no such plans have been formulated or are likely to be implemented, the Chief Financial Officer shall redetermine the useful operating life of the fixed asset in question, if necessary in consultation with the Head of Department controlling or using such item, and shall recalculate the increased annual depreciation expenses accordingly.

7.14.3 General Maintenance of Assets

Every Head of Department shall be directly responsible for ensuring that all assets (other than infrastructure assets which are dealt with in part 7.14.1 and part 7.14.2 above) are properly maintained and in a manner which will ensure that such item attain their useful operating lives.

7.15 Replacement Strategy

The Municipal Manager, in consultation with the Chief Financial Officer and other Heads of Departments, shall formulate norms and standards for the replacement of all normal operational assets. Such norms and standards shall be incorporated in a formal strategy, which shall be submitted to the Council for approval. This strategy shall cover the replacement of motor vehicles, furniture and fittings, computer equipment, and any other appropriate operational items.

Such strategy shall also provide for the replacement of assets which are required for service delivery but which have become uneconomical to maintain.

7.17 Insurance of Assets

The Municipal Manager shall ensure that all movable assets are insured at least against fire and theft, and that all Municipal buildings are insured at least against fire and allied perils.

If the Municipality creates a self-insurance reserve the Chief Financial Officer shall annually determine the premiums payable by the departments or votes after having received a list of the PPE and insurable values of all relevant items from the Heads of Departments concerned.

The Municipal Manager shall recommend to the Council, after consulting with the Chief Financial Officer, the basis of the insurance to be applied to each type of asset:- either the carrying value or the replacement value of the item concerned. Such recommendation shall take due cognisance of the budgetary resources of the Municipality.

7.17 Impairment of Assets

The accounting treatment relating to impairment losses is outlined in GRAP 17.

The carrying amount of an item or a group of identical items of property, plant and equipment should be reviewed periodically in order to assess whether or not the recoverable amount has declined below the carrying amount.

When such a decline has occurred, the carrying amount should be reduced to the recoverable amount. The amount of the reduction should be recognised as an expense immediately, unless it reverses a previous revaluation in which case it should be charged to the Revaluation Reserve.

The recoverable amount of individual assets, or groups of identical assets, is determined separately and the carrying amount reduced to the recoverable amount on an individual asset, or group of identical assets, basis. However, there may be circumstances when it may not be possible to assess the recoverable amount of an asset on this basis, for example when all of the plant and equipment in a sewerage purification works is used for the same purpose. In such circumstances, the carrying amount of each of the related assets is reduced in proportion to the overall decline in recoverable amount of the smallest grouping of assets for which it is possible to make an assessment of the recoverable amount.

The following may be indicators that an asset is impaired:

- The asset has been damaged.
- The asset has become technologically obsolete.
- The asset remains idle for a considerable period either prior to it being put into use or during its useful life.
- Land is purchased at market value and is to be utilized for subsidized housing developments, where the subsidy is less than the purchase price.

The following steps will have to be performed regularly during the year to account for impairment losses:

- Departments will identify and inform the Chief Financial Officer of assets that:

    - Are in a state of damage at year end.
    - Are technologically obsolete at year end. .
    - Have remained idle for a considerable period either prior to them being put into use at year end or during their useful life.
    - Are subject to impairment losses because the subsidies to be received in exchange for assets are less than the carrying amounts.

- The recoverable amounts of these assets need to be determined by calculating the net selling price per asset as defined above.

- The impairment loss per asset is the difference between the net selling price and the carrying value of the asset.

- The impairment loss needs to be accounted for by identifying the relevant funding source.

8 PURCHASE OR HIRE OF IMMOVABLE PROPERTY

The municipality may acquire by purchase, or by hire, immovable property within- or outside the municipal boundary provided it complies with the requirements of the MFMA and the Supply Chain Management policy and subject to the following:

- The cost of the purchase or hire had been budgeted for; and
- The intention to buy or hire the immovable property had been advertised for public comment.
- After consideration of any public comments/objections the Council will:-

    - In the case of the following paragraph complies with the requirements of that paragraph; and

- In the case of all other immovable property, finally resolve to continue with the purchase or hire and apply the supply chain management processes

- The Council will not continue with the purchase or hire of any immovable property where:

    - The price is in excess of the market value thereof as assessed by an appraiser; or
    - The rental which, when calculated per annum in the case of:

        - Immovable property hired for agricultural purposes, exceeds six percent; and
        - Immovable property hired for any other purpose, exceed twelve percent of the market value of the property, as assessed by an appraiser.

The Council may accept a gift or conveyance of immovable property either for the municipality or in trust for charitable or other public purposes not connected with public worship, and hold the same in such trust or for such purpose as may be declared by such donors and may administer, utilize and improve such property.

The trustees of any immovable property held in trust for any township village of settlement which has become a municipality or part of a municipality may transfer such property to the Council, subject to any special trusts in their deeds of title and upon conditions not at variance therewith.

9. DISPOSAL OF ASSETS – REGULATORY REQUIREMENTS

(Numbering in this section corresponds to the numbering in the regulations).

The following principles have to be implemented in accordance with the disposal of assets:

Valuation principle, i.e. the need to attach a value to the transfer or disposal of a municipal capital asset, in order to ensure that the interests of the municipality or municipal entity and of its stakeholders are not prejudiced by the transfer or disposal.

Continuity of service principle, i.e. the need to ensure the uninterrupted continuance of a municipal service when a municipal capital asset that is being used in the delivery of that service, is transferred or disposed of, particularly when the asset is used in the provision of the minimum level of basic municipal services.

Risk transfer principle, i.e. the need to transfer the risk relating to a municipal capital asset in conjunction with the transfer of the asset.

Asset preservation principle, i.e. the need to prevent the indiscriminate or unsustainable transfer or disposal of a municipal capital asset in order not to undermine the ability of the municipality or municipal entity to render or expand municipal services in the longer term.

TRANSFER AND PERMANENT DISPOSAL OF NON-EXEMPTED CAPITAL ASSETS

(1) A municipality may transfer or dispose of a non-exempted capital asset only after

- (a) the accounting officer has in terms of regulation **6** conducted a public participation process to facilitate the determinations a municipal council must make in terms of section 14(2)(a) and (b) of thc Act; and
- (b) the municipal council -
  - (i) has made the determinations required by section 14(2)(a) and (b); and
  - (ii) has as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

(2) Sub-regulation (1)(a) must be complied with only if the capital asset proposed to be transferred or disposed of is a high value capital asset. If the combined value of any capital assets a municipality intends to transfer or dispose of in any financial year exceeds five percent of the total value of its assets, as determined from its latest available audited financial statements, sub-regulation (1)(a) must be complied with in relation to all the capital assets proposed to be transferred or disposed of during that year.

(3) (a) Only the municipal council may authorise the public participation process referred to in sub-regulation (1)(a).

(b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement stating -

(i) the valuation of the capital asset to be transferred or disposed of and the method of valuation used to determine that valuation;

(ii) the reasons for the proposal to transfer or dispose of the capital asset;

(iii) any expected benefits to the municipality that may result from the transfer or disposal;

(iv) any expected proceeds to be received by the municipality from the transfer or disposal; and

(v) any expected gain or loss that will be realised or incurred by the municipality arising from the transfer or disposal.

(4) The value of a capital asset must for purposes of subregulation (3)(b)(i) be determined in accordance with the accounting standards that the municipality is required by legislation to apply in preparing its annual financial statements.

(5) In the absence of sufficient guidance in those accounting standards regarding the valuation of capital assets, any of the following valuation methods must be applied:

(a) historical cost of the asset, adjusted for accumulated depreciation and any impairment losses as at the proposed date of transfer or disposal;

(b) fair market value of the asset;

(c) depreciated replacement cost of the asset; or

(d) realisable value of the asset.

(6) A municipal council may delegate to the accounting officer its power to make the determinations referred to in sub-regulation (1)(b)(i) and to give the approval referred to in sub-regulation (1)(b)(ii) in respect of movable capital assets below a value determined by the municipal council.

Public participation process for municipalities

6. If the municipal council has in terms of regulation 5(3)(a) authorised the accounting officer to conduct a public participation process in connection with any proposed transfer or disposal of a high value capital asset or other asset referred to in regulation 5(2), the accounting officer must at least 60 days before the meeting of the council at which the determinations referred to in regulation S(l)(b) are to be considered-

(a) in accordance with section 21A of the Municipal Systems Act –

(i) make public the proposal to transfer or dispose of the capital asset together with the information statement referred to in regulation 5(3)(b); and

(ii) invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed transfer or disposal of the capital asset; and

(b) solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the matter.

Consideration of proposals to transfer or dispose of non-exempted capital assets

7. The municipal council must, when considering any proposed transfer or disposal of a non-exempted capital asset in terms of regulation S(l)(b)(i) and (ii), take into account –

(a) whether the capital asset may be required for the municipality's own use at a later date;

(b) the expected loss or gain that is expected to result from the proposed transfer or disposal;

(c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality;

(d) the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests;

(e) the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;

(f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;

(g) the estimated cost of the proposed transfer or disposal;

(h) the transfer of any liabilities and reserve funds associated with the capital asset;

(i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;

(j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury;

(k) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and

(l) compliance with the legislative regime applicable to the proposed transfer or disposal.

Decision making process for municipal entities
Transfer or disposal of non-exempted capital assets

8. (1) A municipal entity may transfer or dispose of a non-exempted capital asset only after –

(a) the accounting officer of the entity has in terms of regulation **9** conducted a public participation process to facilitate the determinations that the council of the parent municipality of the entity must make in terms of section 90(2)(a) and (b) of the Act; and

(b) the council of the parent municipality of the municipal entity -
(i) has made the determinations required by section 90(2)(a) and (b); and
(ii) has as a consequence of those determinations approved in principle that the capital asset may be transferred or disposed of.

(2) Sub-regulation (1)(a) must be complied with only if the capital asset proposed to be transferred or disposed of is a high value capital asset. If the combined value of any capital assets a municipal entity intends to transfer or dispose of in any financial year exceeds five per cent of the total value of its assets, as determined from its latest available audited annual financial statements, sub-regulation (1)(a) must be complied

with in relation to all capital assets proposed to be transferred or disposed of during that year.

(3)(a) Only the council of the parent municipality of a municipal entity may authorise the public participation process referred to in sub-regulation (1)(a).

(b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement approved by the board of directors of the municipal entity stating -

(i) the valuation of the capital asset to be transferred or disposed of and the method of valuation used to determine that valuation;

(ii) the reasons for the proposal to transfer or dispose of the capital asset;

(iii) any expected benefits to the municipal entity that may result from the transfer or disposal;

(iv) any expected proceeds to be received by the municipal entity from the transfer or disposal; and

(v) any expected gain or loss that will be realised or incurred by the municipal entity arising from the transfer or disposal.

(4) The value of a capital asset must for purposes of sub-regulation (3)(b)(i) be determined in accordance with the accounting standards that the municipal entity is required by legislation to apply in preparing its annual financial statements.

(5) In the absence of sufficient guidance in those accounting standards regarding the valuation of capital assets, any of the following valuation methods must be applied:

(a) historical cost of the asset, adjusted for accumulated depreciation and any impairment losses as at the proposed date of transfer or disposal;

(b) fair market value of the asset;

(c) depreciated replacement cost of the asset; or

(d) realisable value of the asset.

(6) The council of the parent municipality of a municipal entity may delegate to the accounting officer of the entity its power to make the determinations referred to in sub-regulation (1)(b)(i) and to give the approval referred to in sub-regulation (1)(b)(ii) in respect of movable capital assets below a value determined by the municipal council.

Public participation process for municipal entities

9. If the council of the parent municipality of a municipal entity has in terms of regulation 8(3)(a) authorised the entity to conduct a public participation process in connection with any proposed transfer or disposal of a high value capital asset or other asset referred to in regulation 8(2), the chief executive officer of the entity must at least 90 days before the meeting of the municipal council at which the determinations referred to in regulation 8(l)(b) are to be considered—

(a) in accordance with section 21A of the Municipal Systems Act -

(i) make public the proposal to transfer or dispose of the capital asset together with the information statement referred to in regulation 8(3)(b); and

(ii) invite the local community and other interested persons to submit to the parent municipality comments or representations in respect of the proposed transfer or disposal of the capital asset; and

(b) solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the matter.

Consideration of proposals to transfer or dispose of non-exempted capital assets

10. The council of the municipal entity's parent municipality must, when considering any proposed transfer or disposal of a non-exempted capital asset in terms of regulation 8(1)(b)(i) and (ii), take into account—

(a) whether the capital asset may be required for the municipality's own use at a later date;

(b) the expected loss or gain that is expected to result from the proposed transfer or disposal;

(c) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to the municipality;

(d) the risks and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the municipality's interests;

(e) the effect that the proposed transfer or disposal will have on the credit rating of the municipality, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;

(f) any limitations or conditions attached to the capital asset or the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;

(g) the estimated cost of the proposed transfer or disposal;

(h) the transfer of any liabilities and reserve funds associated with the capital asset;

(i) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;

(j) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant provincial treasury;

(k) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and

(l) compliance with the legislative regime applicable to the proposed transfer or disposal.

Conditional approval of transfer or disposal of non-exempted capital assets

11. An approval in principle in terms of regulation S(l)(b)(ii) or 8(l)(b)(ii) that a non-exempted capital asset may be transferred or disposed of, may be given subject to any conditions, including conditions specifying" –

(a) the way in which the capital asset is to be sold or disposed of;

(b) a floor price or minimum compensation for the capital asset;

(c) whether the capital asset may be transferred or disposed of for less than its fair market value, in which case the municipal council must first consider the criteria set out in regulation 13(2); and

(d) a framework within which direct negotiations for the transfer or disposal of the capital asset must be conducted with another person, if transfer or disposal is subject to direct negotiations.

Transfer or disposal of non-exempted capital assets to be in accordance with disposal management system

12. (1) If approval has been given in terms of regulation 5(1)(b)(ii) or 8(1)(b)(ii) that a non-exempted capital asset may be transferred or disposed of, the relevant municipality or municipal entity may transfer or dispose of the asset only in accordance with its disposal management system, irrespective of -

(a) the value of the capital asset; or

(b) whether the capital asset is to be transferred to a private sector party or an organ of state.

(2) The disposal management system of a municipality or municipal entity does not apply to the transfer of a non-exempted capital asset if –

(a) the municipality -
  (i) reviews in terms of Chapter 8 of the Municipal Systems Act its service delivery mechanisms for the performance of a municipal service;
  (ii) appoints a private sector party" through a competitive bidding process as the service provider for the performance of that municipal service; and
  (iii) transfers the capital asset as an integral component of the performance of that municipal service to that service provider; or

(b) the municipality or municipal entity -
  (i) appoints a private sector party or organ of state through a competitive bidding process as the service provider for the performance of a commercial service; and
  (ii) transfers the capital asset as an integral component of the performance of that commercial service to that service provider.

(3) The municipality or municipal entity may negotiate directly with the selected service provider regarding the transfer of a capital asset referred to in sub-regulation (2)(a) or (b).

(4) A municipality or municipal entity may not commence with the process referred to in sub-regulation (1) or negotiations referred to in sub-regulation (3) unless approval in principle has in terms of regulation 5(1)(b)(ii) or 8(1)(b)(ii) been given that the relevant capital asset may be transferred or disposed of.

(5) In applying the process referred to in sub-regulation (1) or conducting negotiations referred to in sub-regulation (3), the municipality or municipal entity must consider the gain or loss that will –

(a) result from the transfer or disposal of the relevant capital asset; and

(b) be recorded in the accounting records of the municipality or municipal entity.

Compensation for transfer of non-exempted municipal capital assets

13. (1) The compensation payable to a municipality or municipal entity for the transfer of a non-exempted capital asset must, subject to sub-regulation (2) –

- be consistent with criteria applicable to compensation set out in the disposal management system of the municipality or municipal entity; and

- if regulation 12(2)(b) applies to the transfer, reflect fair market value.

(2) If a municipality or municipal entity on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted capital asset for less than its fair market value, the municipality or entity must, when considering the proposed transfert6, take into account -

(a) the interests of -
  (i) the State; and
  (ii) the local community;

(b) the strategic and economic interests of the municipality or municipal entity, including the long-term effect of the decision on the municipality or entity;

(c) the constitutional rights and legal interests of all affected parties;

(d) whether the interests of the parties to the transfer should carry more weight than the interest of the local community, and how the individual interest is weighed against the collective interest; and

(e) whether the local community would be better served if the capital asset is transferred at less than its fair market value, as opposed to a transfer of the asset at fair market value.

Preconditions for transferring non-exempted capital assets as part of appointment of service providers for performance of municipal or commercial services

14. If a municipality or municipal entity intends to transfer to a private sector party or organ of state a non-exempted capital asset following the selection through a competitive bidding process of a service provider for the performance of a municipal service referred to in regulation 12(2)(a) or for the performance of a commercial service referred to in regulation 12(2)(b) –

(a) all assets needed or directly related to the performance of that service must be properly identified lo distinguish those assets from the other assets of the municipality or municipal entity;

(b) all decisions referred to in regulation 5(1)(b)(i) and (ii) or 8(1)(b)(i) and (ii) relating to the transfer of the capital asset must be taken as an integral part of the broader decision-making process on the appointment of a service provider for the performance of that service; and

(c) all documents prepared for the purpose of those decisions, must be taken into account in any feasibility study conducted to determine the financial and other implications of appointing a service provider for the performance of that service.

Transfer of municipal assets to service providers appointed through competitive bidding

15. (1) If a service provider is appointed for the performance of a municipal service referred to in regulation 12(2)(a) or for the performance of a commercial service referred to in regulation 12(2)(b), the municipality or municipal entity may, as may be agreed with the service provider and subject to section 14(1) of the Act, transfer to that service provider all capital assets, including subsidiary assets, essential to the performance of that service.

(2) Capital and subsidiary assets that may be transformed in terms of sub-regulation (1) as essential to the performance of the service referred to in that subsection may include –

(a) plant, machinery and equipment and any other movable assets used for or in connection with that service;

(b) land, property and buildings and other immovable structures used for or in connection with that service, irrespective of whether the land, property, buildings or other immovable structures are classified as investment property in the accounting records of the municipality or municipal entity;

(c) intangible assets recorded in the accounting records of the municipality or municipal entity as an integral part of that service;

(d) receivables, both short-term and long-term, provided that the transfer does not undermine the legal recoverability of such receivables by the person to whom the assets are transferred;

(e) investments, including the instruments referred to in regulation 6 of the Municipal Investment Regulations published by Government Notice No. K.308 of 2005;

(f) cash and bank balances derived from the performance of that service; and

(g) any cash reserves associated with the performance of that service.

Discharge of borrowings on assets transferred or disposed of in terms of this Chapter

16. (1) The proceeds received from the transfer or disposal of an asset in terms of this Chapter must be used to discharge any borrowing against the asset as at its redemption date, or another date as may be negotiated with the lender.

(2) Sub-regulation (1) may not be read as preventing a municipality or municipal entity from negotiating with the private sector party or organ of state to whom an asset is transferred in terms of this Chapter, to take over, as part of the compensation payable to the municipality or entity, any borrowing the municipality or entity made against the asset.

Transfer agreements

17. (1) A municipality or municipal entity may transfer assets approved for transfer to a private sector party or organ of state in terms of this Chapter, only by way of a written transfer agreement concluded between the transferring municipality or entity and the receiving private sector party or organ of state.

(2) A transfer agreement must set out the terms and conditions of the transfer, including, as a minimum -

(a) a sufficient description of the capital asset being transferred in order to identify the asset;

(b) particulars of any subsidiary assets that are transferred with the capital asset;

(c) particulars of any liabilities transferred with the asset;

(d) the amount of compensation payable to the municipality or municipal entity for the transfer of the asset or assets, and the terms and conditions of payment; and

(e) the effective date from which the risk and accountability for the asset or assets is transferred to the receiving private sector party or organ of state.

(3) If a capital asset is transferred following the selection through a competitive bidding process of a service provider for the performance of a municipal service referred to in regulation 12(2)(a) or for the performance of a commercial service referred to in regulation 12(2)(b), the transfer agreement referred to in sub-regulation (1) –

(a) must contain provision for -
    (i) contract termination in the case of non- or underperformance;
    (ii) dispute resolution mechanisms to settle disputes between the parties; and
    (iii) a periodic review of the agreement once every three years, in the case of an agreement for longer than three years; and

(b) may be incorporated into any service delivery agreement or procurement contract to be concluded with the service provider.

Access to transfer agreements

18. An agreement in terms of which a municipality or municipal entity transfers a non-exempted capital asset in terms of this Chapter -

(a) must be made available in its entirety to the council of the municipality or the council of the parent municipality of the municipal entity; and

(b) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

TRANSFER OF EXEMPTED CAPITAL ASSETS

19. The purpose of this Chapter is -

(a) to define the circumstances in which the transfer of municipal capital assets to organs of state is for purposes of section 14(6) and section 90(6) of the Act exempted from the other provisions of section 14 or **90;17** and

(b) to prescribe a framework contemplated in section 14(6) and section 90(6) for regulating the transfer in those circumstances of municipal capital assets to organs of state.

Circumstances in which transfer of municipal capital assets to organs of state is exempted from sections 14 and 90

20. (1) Section 14(1) to (5) and section 90(1) to *(5)* of the Act does not apply if a municipality or municipal entity transfers a capital asset to an organ of state in any of the following circumstances:

(a) When transfer of a capital asset emanates from a review by a municipality of its service delivery mechanisms for the performance of a municipal service in terms of Chapter 8 of the Municipal Systems Act and the municipality appoints another organ of state as the preferred option for the performance of the service;

(b) when transfer of a capital asset emanates from a reorganisation of powers and functions between a parent municipality and its municipal entity, including asset transfers contemplated in section 84 of the Act;

(c) when transfer of a capital asset emanates from an assignment of any of the powers or functions of a municipality to another organ of state by national legislation or in terms of a power contained in national legislation, including an assignment of powers or functions following -
  (i) an adjustment of the division of powers and functions between a district municipality and local municipalities within the district in terms of section 85 of the Municipal Structures Act;
  (ii) an authorisation in terms of section 84(3) the Municipal Structures Act; or
  (iii) a re-demarcation of municipal boundaries in terms of the Municipal Structures Act;

(d) when municipal housing or land is transferred to a national or provincial organ of state for housing for the poor or in terms of a national or provincial housing policy;

(e) when transfer of a capital asset to an organ of state is required or permitted in terms of national legislation and that legislation determines the conditions of the transfer; or

(f) any other circumstance not provided in paragraph (a) to (e), provided that –
  (i) the capital asset to be transferred is determined by resolution of the council to be not needed for the provision of the minimum level of basic municipal services and to be surplus to the requirements of the municipality; and
  (ii) if the capital asset is to be transferred for less than fair market value, the municipality takes into account -
    (aa) whether the capital asset may be required for the municipality or municipal entity under the municipality's sole or shared control at a later date;
    (bb) the expected loss or gain that is expected to result from the proposed transfer;
    (cc) the extent to which any compensation to be received in respect of the proposed transfer will result in a significant economic or financial cost or benefit to the municipality;
    (dd) the risks and rewards associated with the operation or control of the capital asset that is to be transferred in relation to the interests of the municipality or municipal entity;
    (ee) the effect that the proposed transfer will have on the ability of the municipality or municipal entity to raise long-term or short-term borrowings in the future;
    (ff) any limitations or conditions attached to the capital asset or the transfer of the asset, and the consequences of any potential noncompliance with those conditions;
    (gg) the estimated cost of the proposed transfer;
    (hh) the transfer of any reserve funds associated with the capital asset;
    (ii) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
    (jj) compliance with the legislative regime applicable to the proposed transfer.

(2) Any transfer of a municipal capital asset to an organ of state in circumstances described in sub-regulation (1) may be effected only in accordance with this Chapter and any other legislation specifically regulating the transfer of the asset, but in the event of any inconsistency between a provision of this Chapter and such other legislation, that other legislation prevails.

Circumstances in which transfer of municipal capital assets to organs of state is not exempted from sections 14 and 90

21. Sections 14(1) to (5) and 90(1) to (5) of the Act and Chapter 2 of these Regulations must be applied if a municipality or municipal entity transfers a capital asset to an organ of state when none of the circumstances mentioned in regulation 20 apply, including when the asset is transferred in the course of an ordinary commercial transaction between the municipality or entity and the organ of state.

Municipal decision-making processes for transfer of exempted capital assets

22. (1) If an exempted capital asset is to be transferred to an organ of state in connection with the performance of a municipal service contemplated in regulation 20(l)(a) or a reorganisation of powers or functions contemplated in 20(l)(b) –

(a) all decisions relating to the transfer of the capital asset must be taken by the municipality or municipal entity as an integral part of the broader decision making process on the selection of a service provider for the performance of the municipal service or on the reorganisation of powers or functions in terms of the legislation applicable to that process;

(b) any document prepared by the municipality or municipal entity for the purpose of conducting a public participation process to involve the community in decision-making must include details of the proposed transfer of the capital asset; and

(c) the proposed transfer of the capital asset must be taken into account in any feasibility study conducted to determine the financial and other implications of the selection of a service provider for the performance of the municipal service or of the reorganisation of powers or functions.

(2) If a feasibility study referred to in sub-regulation (1)(c) indicates that there will be a significant increase in the costs of the municipality or municipal entity after the transfer of the capital asset to the organ of state, the municipality or the parent municipality of the entity must demonstrate -

(a) how the costs can be minimised by considering the sharing of administrative, information technology or financial costs between the municipality or municipal entity and the organ of state;

(b) how much revenue can be generated by the organ of state which will be available to the municipality or municipal entity to offset any increased costs it will incur as a result of the transfer; and

(c) the extent to which the municipality or municipal entity can rationalise its administrative, information technology and financial costs subsequent to the transfer.

(3) A municipality transferring a capital asset to an organ of state in the circumstances described in regulation 20(l)(a) must take all reasonable steps to ensure that the transfer will result in the continuation of the municipal service concerned at least at the same or better level that would otherwise have been rendered by the transferring municipality had it not transferred the asset.

Identification of exempted capital assets to be transferred to organs of state

23. Before transferring an exempted capital asset to an organ of state in any of the circumstances described in regulation 20(1), a municipality or municipal entity must -

(a) properly identify the capital asset, including -

  (i) in the case of a transfer emanating from the circumstances referred to in regulation 20(1)(a), all other assets needed for or directly related to, and staff associated with, the performance of the municipal service concerned;

  (ii) in the case of a transfer emanating from the circumstances referred to in regulation 20(1)(b) or (c), all other assets needed for or directly related to, and staff associated with, the exercise of the power or function concerned; or

  (iii) in the case of a transfer emanating from the circumstances referred to in regulation 20(1)(d) or (e), all other assets needed for or directly related to that capital asset; and

(b) distinguish that asset and staff from the other assets and staff of the municipality or municipal entity.

Transfer of exempted capital assets needed to provide minimum level of basic municipal services

24. (1) If a municipality or municipal entity transfers to an organ of state an exempted capital asset needed to provide the minimum level of basic municipal services, such transfer may only be effected on condition that -

(a) ownership in the capital asset must immediately revert to the municipality or municipal entity should the organ of state for any reason cease to render the service or is unable to render the service; and

(b) the organ of state may not without the written approval of the municipality or the parent municipality of the municipal entity -

  (i) transfer the capital asset to another person;

  (ii) dispose of the capital asset;

  (iii) grant a right to another person to use, control or manage the capital asset; or

  (iv) encumber the capital asset in any way.

(2) Before transferring an exempted capital asset needed to provide the minimum level of basic municipal services, the municipality or municipal entity must be satisfied that the organ of state to which the asset is to be transferred can demonstrate the ability to adequately maintain and safeguard the asset.

(3) The transfer agreement, service delivery or other agreement between the municipality or municipal entity and the organ of state to whom the asset is to be transferred must reflect the conditions set out in sub-regulation (1).

(4) If the organ of state replaces, upgrades or improves the capital asset transferred to it, the conditions set out in sub-regulation (1) remain applicable to the new, upgraded or improved capital asset as if it were the original capital asset.

(5) This regulation does not apply to a capital asset needed to provide the minimum level of basic municipal services which is transferred to an organ of state in the circumstances referred to in regulation **20**(1)(c) or (d).

Transfer of exempted capital assets contemplated in regulation 20(1)(a) or (c)

25. (1) If a municipality appoints an organ of state as the service provider for the performance of a municipal service as contemplated in regulation 20(l)(a) or if a power or function of a municipality or municipal entity is assigned to an organ of state as contemplated in regulation 20(l)(c), the municipality or entity must, as may be agreed with the organ of state, transfer to that organ of state all capital assets, including subsidiary assets, essential to the performance of that municipal service or the exercise of that power or function

(2) Capital and subsidiary assets that must be transferred in terms of sub-regulation (1) may include -

(a) plant, machinery and equipment and other movable assets used for or in connection with the service, power or function referred to in that sub-regulation;

(b) land, property and buildings and other immovable structures used for or in connection with that service, power or function , irrespective of whether the land, property and buildings or other immovable structures are classified as investment property in the accounting records of the municipality or municipal entity;

(c) intangible assets recorded in the accounting records of the municipality or municipal entity as an integral part of that service, power or function;

(d) receivables, both short-term and long-term, provided that the transfer does not undermine the legal recoverability of such receivables by the organ of state;

(e) investments, including the instruments referred to in regulation 6 of the Municipal Investment Regulations, published in Government Notice No. R.308 of 2005;

(f) cash and bank balances derived from the performance of that service, power or function; and

(g) cash equal to the residual value of assets and liabilities as well as any reserve funds associated with that service, power or function, or alternatively ensure that the organ of state has appropriate access to the cash resources of the municipality or entity.

Transfer of borrowings

26. (1) If a municipality or municipal entity transfers an exempted capital asset to an organ of state, any borrowings or other amounts owing by the municipality or entity specifically associated with the asset being transferred, or with its acquisition, operation or maintenance, must also be transferred to the organ of state.

(2) If the transfer of an exempted capital asset by a municipality or municipal entity to an organ of state emanates from the appointment of an organ of state as the service provider for the performance of a municipal service as contemplated in regulation 20(l)(a) or the assignment of a power or function of a municipality or entity to an organ of state as contemplated in regulation 20(l)(c), any borrowings or other amounts owing by the municipality or entity specifically associated with the performance of that municipal service or the exercise of that power or function, must also be transferred to the organ of state.

(3) In addition, a portion of the outstanding balance of general borrowings on capital expenditure by the municipality or municipal entity which is attributable or associated with the capital asset being transferred or with the performance of the relevant municipal service or with the exercise of the relevant power or function must also be transferred to the organ of state, in a ratio of total value of capital assets being transferred to the organ of state to total value of all capital assets of the municipality or entity, as appears in the accounting records of the municipality or entity.

(4) Sub-regulation (1), (2) or (3) applies only if -

(a) the creditor to whom the amount is owed consents to the transfer to the organ of state of the amount owing; and

(b) any legal, operational, administrative or other constraints do not prevent the transfer to the organ of state of the amount owing.

(5) If a borrowing or other amount owing is transferred to an organ of state in terms of sub-regulation (1), (2) or (3), the organ of state -

(a) replaces the municipality or municipal entity as debtor in relation to the borrowing or amount owing; and
(b) becomes liable for the borrowing or amount owing as fully and effectually as if it originally entered into the agreement with the creditor.

(6) If for any reason a borrowing or other amount owing referred to in sub-regulation (1), (2) or (3) is not transferred to the organ of state -
(a) the municipality or municipal entity remains liable for the amount owing to the creditor; and
(b) the municipality or municipal entity and the organ of state must enter into an agreement whereby the organ of state undertakes to compensate the municipality or entity for all payments made by it to the creditor in terms of paragraph (a).

(7) A borrowing or other amount owing referred to in sub-regulation (1), (2) or (3) must be identified and allocated to the organ of state on a reasonable basis.

Transfer of staff associated with performance of functions assigned to organs of state

27. If a municipality or municipal entity transfers an exempted capital asset to an organ of state and the transfer of that asset gives rise to the transfer to the organ of state of staff associated with the asset the staff transfer must be consistent with legislation regulating staff transfers in those circumstances, including any applicable labour legislation and legislation regulating the transfer of liabilities associated with such staff.

Compensation for transfer of assets

28. (1) A municipality or municipal entity transferring an exempted capital asset and any subsidiary assets to an organ of state may receive compensation for the value of those assets, as may be agreed with the organ of state.

(2) The value of an asset must for purposes of sub-regulation (1) be determined in accordance with regulation **29.**

Valuation of assets

29. (1) The value of a capital asset or any subsidiary assets transferred to an organ of state in terms of this Chapter must be determined in accordance with the accounting standards that the municipality or municipal entity is required by legislation to apply in preparing its annual financial statements.

(2) In the absence of sufficient guidance in those accounting standards regarding the valuation of assets, any of the following valuation methods must be applied:
(a) historical cost of the asset, adjusted for accumulated depreciation and any impairment losses as at the date of transfer of the asset;
(b) fair market value of the asset;
(c) depreciated replacement cost of the asset; or
(d) realisable value of the asset.

(3) The value of liabilities transferred to an organ of state in terms of regulation **26** must be determined in accordance with the accounting standards that the municipality or municipal entity is required by legislation to apply in preparing its annual financial statements.

(4) In the absence of sufficient guidance in those accounting standards regarding the valuation of liabilities attached to those assets, any of the following valuation methods must be applied:

(a) the settlement value of the liability, which is the amount that will be paid or the value of the service that will be provided to settle the liability when due; or
(b) the net present value of the liability, after discounting future settlement values to present values.

Transfer agreements

30. (1) A municipality or municipal entity may transfer assets and liabilities in terms of this Chapter to an organ of state only in accordance with a written transfer agreement concluded between the municipality or entity and the organ of state.

(2) A transfer agreement must -
(a) set out the terms and conditions of the transfer, including, as a minimum -
(i) a sufficient description of the capital asset being transferred in order to identify the asset:
(ii) particulars of any subsidiary assets that are transferred with the capital asset;
(iii) details of all staff that will be affected and the legislation in terms of which such staff will be transferred;
(iv) particulars of any liabilities transferred with the asset;
(v) the amount of any compensation payable to the municipality or municipal entity for the transfer of the asset, and the terms and conditions of payment;
(vi) the effective date from which the risk and accountability for the asset or assets is transferred to the organ of state;
(vii) in instances in which the organ of stale is required or chooses to use the billing, information technology or any other administrative structure of the municipality or municipal entity in the operation of the asset, the terms and conditions of such usage together with the basis of compensation for such usage and the financial risk exposure to the municipality or entity;
(viii) details of any staff of the municipality or municipal entity that will be available to the organ of state on a temporary or defined basis in the operation of the asset, together with the basis of compensation for such staff and the financial risk exposure to the municipality or entity;
(ix) where the asset is to be used by both the municipality or municipal entity and the organ of state, the basis of how the asset is to be shared as well as how the costs and benefits of the shared asset will be apportioned between parties;
(x) the value of the asset determined in accordance with regulation **29**;
(xi) appropriate evidence to support the valuation of the asset; and
(xii) details of any encumbrances, rights and servitudes, applicable to the asset;
(b) state that the transfer is effected on the basis of the provisions of this Chapter and that these provisions must for this purpose be regarded as forming part of the agreement; and
(c) be signed on behalf of the municipality or municipal entity and the organ of state.

(3) If a capital asset is transferred following the appointment of an organ of state as the service provider for the performance of a municipal service contemplated in regulation 20(l)(a), the transfer agreement referred to in sub-regulation (1) --
(a) must provide for -
(i) contract termination in the case of non- or underperformance, which must be linked to termination of any service delivery agreement entered into between the parties;
(ii) dispute resolution mechanisms to settle disputes between the parties;
(iii) a periodic review of the agreement whenever the service delivery agreement to which it is linked is reviewed in terms of the Municipal Systems Act, but at least once every three years in the case of an agreement for longer than three years; and

(iv) requirements for the organ of state to maintain and safeguard the asset for its intended purpose, taking into account the condition of the asset and its estimated remaining life at the date of transfer;

(b) may contain --

(i) limitations or restrictions on the use or subsequent transfer of the asset; and

(ii) limitations and conditions by which an asset may be used for the provision of security over any borrowing of the organ of state; and

(c) may be incorporated into any service delivery agreement to be concluded with the organ of state as service provider.

Impact of asset transfers on financial interests of transferring municipalities and municipal entities

31. (1) Before entering into a transfer agreement in terms of regulation **30**, a municipality or municipal entity must consider the effect that the transfer of an asset will have on -

(a) its credit rating and ability to raise long-term or short-term funds in the future; and

(b) its financial position and cash flow.

(2) Sub-regulation (1) does not apply if the asset is transferred to an organ of state in the circumstances referred to in regulation 20(1)(c), (d) or (e).

Due diligence

32. (1) Before entering into a transfer agreement in terms of regulation **30** the organ of state to whom a capital asset is to be transferred must undertake and document a due diligence review on the asset and any liabilities transferred to it.

(2) The results of the due diligence must be taken into account in any decision to transfer a capital asset in terms of this Chapter.

CHAPTER 4
GRANTING OF RIGHTS TO USE, CONTROL OR MANAGE MUNICIPAL CAPITAL ASSETS

Purpose of this Chapter

33. (1) The purpose of this Chapter is to regulate the granting by municipalities and municipal entities of rights to use, control or manage capital assets in circumstances where sections 14 and 90 of the Act and Chapters **2** and **3** of these Regulations do not apply.

(2) This Chapter does not apply to the granting by municipalities and municipal entities of --

(a) rights to use, control or manage capital assets in terms of public-private partnership agreements referred to in section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. R.309 of 2005; or

(b) rights on municipal land to housing for the poor to beneficiaries of such housing.

(3) The granting by a municipality or municipal entity of a right to use, control or manage a capital asset must for the purposes of these Regulations be dealt with in terms of Chapter **2** or **3** as if such granting of a right is a transfer within the meaning of that Chapter, if the right -

(a) is granted for an indefinite or undetermined period;

(b) is granted for a period which exceeds -

(i) the useful life of the capital asset; or

(ii) the economic usefulness of the capital asset and which would require the asset, in order to remain economically useful, to be substantially upgraded, altered or replaced during the period for which the right is granted; or

(c) confers on the person to whom the right is granted -

(i) an option to buy or acquire ownership in the capital asset; or

(ii) the power to use, control or manage the capital asset as if that person is the beneficial (but not legal) owner of the asset.

Part 1 : ***Decision-making process for municipalities***
Granting of rights to use, control or manage municipal capital assets

34. (1) A municipality may grant a right to use, control or manage a capital asset only after -

(a) the accounting officer has in terms of regulation 35 conducted a public participation process regarding the proposed granting of the right; and

(b) the municipal council has approved in principle that the right may be granted.

(2) Sub-regulation (1)(a) must be complied with only if -

(a) the capital asset in respect of which the proposed right is to be granted has a value in excess of R10 million; and

(b) a long term right is proposed to be granted in respect of the capital asset.

(3) (a) Only the municipal council may authorise the public participation process referred to in sub-regulation (1)(a).

(b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement stating -

(i) the reasons for the proposal to grant a long term right to use, control or manage the relevant capital asset;

(ii) any expected benefits to the municipality that may result from the granting of the right;

(iii) any expected proceeds to be received by the municipality from the granting of the right; and

(iv) any expected gain or loss that will be realised or incurred by the municipality arising from the granting of the right.

(4) A municipal council may delegate to the accounting officer its approval power referred to in sub-rebrulation (1)(b) excluding the power to grant long term rights to use, control or manage capital assets of a value in excess of R10 million.

Public participation process for granting long term rights to municipal capital assets with value in excess of R10 million

35. If the municipal council has in terms of regulation 34(3)(a) authorized the accounting officer to conduct a public participation process in connection with any proposed granting of a long term right to use, control or manage a capital asset with a value in excess of R10 million, the accounting officer must at least 60 days before the meeting of the municipal council at which the decision referred to in regulation 34(1)(b) is to be considered -

(a) in accordance with section 21A of the Municipal Systems Act -

(i) make public the proposal to grant the relevant right together with the information statement referred to in regulation 34(3)(b); and

(ii) invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed granting of the right; and

(b) solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the matter.

Consideration of proposals to grant rights to use, control or manage municipal capital assets

36. The municipal council must, when considering in terms of regulation 34(1)(b) approval for any proposed granting of a right to use, control or manage a capital asset, take into account -

(a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
(b) the extent to which any compensation to be received for the right together with the estimated value of any improvements or enhancements to the capital asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit to the municipality;
(c) the risks and rewards associated with the use, control or management of the capital asset in relation to the municipality's interests;
(d) any comments or representations on the proposed granting of the right received from the local community and other interested persons;
(e) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;
(f) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and
(g) compliance with the legislative regime applicable to the proposed granting of the right.

Part 2: Decision-making process for municipal entities
Granting of rights to use, control or manage municipal capital assets

37. (1) A municipal entity may grant a right to use, control or manage a capital asset only after -

(a) the accounting officer of the entity has in terms of regulation **38** conducted a public participation process regarding the proposed granting of the right; and
(b) the council of the parent municipality of the entity has approved in principle that the right may be granted.

(2) Sub-regulation (1)(a) must be complied with only if -

(a) the capital asset in respect of which the proposed right is to be granted has a value in excess of R 10 million; and
(b) a long term right is proposed to be granted in respect of the capital asset.

(3) (a) Only the council of the parent municipality of a municipal entity may authorise the public participation process referred to in sub-regulation (1)(a).

(b) A request to the municipal council for authorisation of a public participation process must be accompanied by an information statement approved by the board of directors of the municipal entity stating -

(i) the reasons for the proposal to grant a long term right to use, control or manage the relevant capital asset;
(ii) any expected benefits to the municipal entity that may result from the granting of the right;
(iii) any expected proceeds to be received by the municipal entity from the granting of the right; and
(iv) any expected gain or loss that will be realised or incurred by the municipal entity arising from the granting of the right.

(4) The council of the parent municipality of a municipal entity may delegate to the accounting officer of the entity its approval power referred to in sub-regulation (1)(b) excluding the power to grant long term rights to use, control or manage capital assets of a value in excess of R10 million.

Public participation process for granting long term rights to municipal capital assets with value in excess of R10 million

38. If the council of the parent municipality of a municipal entity has in terms of regulation **37**(3)(a) authorised the entity to conduct a public participation process in connection with any proposed granting of a long term right to use, control or manage a capital asset with a value in excess of R10 million, the chief executive officer of the entity must at least 90 days before the meeting of the council of the parent municipality at which the decision referred to in regulation **37**(1)(b) is to be considered-

(a) in accordance with section 21A of the Municipal Systems Act -
  (i) make public the proposal to grant the relevant right together with the information statement referred to in regulation **37**(3)(b); and
  (ii) invite the local community and other interested persons to submit to the parent municipality comments or representations in respect of the proposed of the right; and

(b) solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the matter.

Consideration of proposals to grant rights to use, control or manage municipal capital assets

39. The council of the parent municipality of a municipal entity must, when considering in terms of regulation 37(l)(b) approval for any proposed granting of a right to use, control or manage a capital asset, take into account -

(a) whether the capital asset may be required for the municipality or a municipal entity under the municipality's sole or shared control at a later date;

(b) the extent to which the compensation for the right to use, control or manage the capital asset together with the estimated value of any improvements or enhancements to the asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit for the municipality or municipal entity;

(c) the risks and rewards associated with the use, control or management of the capital asset in relation to the interests of the municipality or municipal entity;

(d) any comments or representations on the proposed granting of the right received from the local community and other interested persons;

(e) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant provincial treasury;

(f) the interests of any affected organ of slate, the strategic, legal and economic interests of the municipality and municipal entity and the interests of the local community; and

(g) compliance with the legislative regime applicable to the granting of the right.

Part 3: Provisions applicable to both municipalities and municipal entities
Conditional approval of rights to municipal capital assets

40. An approval in principle in terms of regulation 34(l)(b) or 37(l)(b) that a right to use, control or manage a capital asset may be granted, may be given subject to any conditions, including conditions specifying -

(a) the type of right that may be granted, the period for which it is to be granted and the way in which it is to be granted;

(b) the minimum compensation to be paid for the right; and

(c) a framework within which direct negotiations for the granting of the right must be conducted, if granting of the right is subject to direct negotiations.

Granting of rights to use, control or manage municipal capital assets to be in accordance with disposal management system

41. (1) If approval in principle has been given in terms of regulation **34**(1)(b) or **37**(1)(b) that a right to use, control or manage a capital asset may be granted, the relevant municipality or municipal entity may grant the right only in accordance with the disposal management system of the municipality or entity, irrespective of -
(a) the value of the asset;
(b) the period for which the right is to be granted; or
(c) whether the right is to be granted to a private sector party or organ of state.

(2) The disposal management system of a municipality or municipal entity does not apply to the granting of a right to use, control or manage a capital asset if -
(a) the municipality -
  (i) reviews in terms of Chapter **8** of the Municipal Systems Act its service delivery mechanisms for the performance of a municipal service;
  (ii) selects through a competitive bidding process a private sector party or appoints an organ of state as the service provider for the performance of that municipal service; and
  (iii) grants that service provider the right to use, control or manage that capital asset as an integral component of the performance of that municipal service;
(b) the municipality or municipal entity -
  (i) selects through a competitive bidding process a private sector party or organ of stale as the service provider for the performance of a commercial service; and
  (ii) grants that service provider the right to use, control or manage that capital asset as an integral component of the performance of that commercial service;
(c) the right to use, control or manage that capital asset is granted as part of a reorganisation of powers or functions between a parent municipality and its municipal entity;
(d) the right to use, control or manage that capital asset is granted in circumstances referred to in section 110(2) of the Act; or
(e) the right to use, control or managc that capital asset is granted to another organ of state in any other circumstance not provided in paragraph (a) to (d) provided that the capital asset is determined by resolution of the council of the municipality or of the parent municipality of the municipal entity to be surplus to the requirements of the municipality or entity.

(3) The municipality or municipal entity may negotiate directly with the private sector party or organ of state to whom the right to use, control or manage a capital asset referred to in sub-regulation (2)(a), (b), (c), (d) or (e) is to be granted.

(4) Before granting the right to use, control or manage a capital asset, the municipality or municipal entity must be satisfied that the private sector party or organ of state to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset.

Preconditions for granting of long term rights to municipal capital assets as part of selection of service providers for performance of municipal or commercial services

42. If a municipality or municipal entity intends to grant to a private sector party or organ of state a long term right to use, control or manage a capital asset with a value in excess of R10 million following the selection of that private sector party or organ of state as the service provider for the performance of a municipal service referred to in regulation **41**(2)(a) or for the performance of a commercial service referred to in regulation **41**(2)(b) -

(a) all assets needed or directly related to the performance of that service must be properly identified, to distinguish those assets from the other assets of the municipality or municipal entity;

(b) the decision required in terms of regulation **34**(l)(b) or **37**(l)(c) relating to the granting of the right must be taken as an integral part of the broader decision making process on the selection of a service provider for the performance of that service; and

(c) all documents prepared for the purpose of that decision must be taken into account in any feasibility study conducted to determine the financial and other implications of appointing a service provider for the performance of that service.

Continuation of municipal services

43. If a municipality or municipal entity grants a right to use, control or manage a capital asset used for or in connection with a municipal service, the municipality or entity must take all reasonable steps to ensure that the granting of the right will result in the continuation of the service at least at the same or better level that would otherwise have been rendered by the municipality or entity had it not granted the right.

Granting of rights to use, control or manage municipal capital assets needed to provide minimum level of basic municipal services

44. If approval in principle has been given in terms of regulation **34**(1)(b) or **37**(1)(b) that a right to use, control or manage a capital asset may be granted and that asset is needed to provide the minimum level of basic municipal services, such right may only be granted on condition that -

(a) the granting of the right immediately lapses should the private sector party or organ of state to whom the right is granted, for any reason cease or become unable to render the service for which the capital asset is used; and

(b) the private sector party or organ of state to whom the right is granted may not without the written consent of the municipality or the parent municipality of the municipal entity grant a right to another person to use, control or manage that capital asset.

Agreements granting rights to use, control or manage municipal capital assets

45. (1) A municipality or municipal entity may grant a right to use, control or manage a capital asset to a private sector party or organ of state only by way of a written agreement concluded between the municipality or entity and the private sector party or organ of state to whom the right is granted.

(2) An agreement referred to in sub-regulation (1) must --

(a) set out the terms and conditions on which the right is granted, including, as a minimum -

  (i) a sufficient description of the capital asset in respect of which the right is granted, in order to identify the asset;

  (ii) particulars of any subsidiary assets that are to be made available with the capital asset;

  (iii) the period for which the right is granted;

  (iv) the amount of compensation payable to the municipality or municipal entity for the granting of the right, and the terms and conditions of payment;

  (v) requirements for the private sector party or organ of state to whom the right is granted to maintain and safeguard the asset for its intended purpose, taking into account the condition of the asset and its estimated remaining life at the date of granting of the right;

  (vi) where the asset is to be used by the municipality or municipal entity and the public sector party or organ of state to whom the right is granted, the basis of how the asset is to be shared as well as how the costs and benefits of the shared asset will be apportioned between the parties;

(vii) the extent to which the public sector party or organ of state to whom the right is granted will be required to make improvements or enhancements to the asset, and the terms and conditions regulating such improvements or enhancements;
(viii) a statement to the effect that the risk and accountability for the asset is transferred to the public sector party or organ of state to whom the right is granted;
(ix) the effective date from which the risk and accountability for the asset is transferred; and
(x) a clause disallowing the private sector party or organ of state to whom the right is granted from ceding or subcontracting the right to another person; and

(b) be signed on behalf of the municipality or municipal entity and the private sector party or organ of state to whom the right is granted.

(3) If a long term right to a capital asset with a value in excess of R10 million is granted following the selection of a service provider for the performance of a municipal service referred to in regulation **41**(2)(a) or for the performance of a commercial service referred to in regulation **41**(2)(b), the agreement referred to in sub-regulation (1) --

(a) must contain provision for -
(i) contract termination in the case of non- or underperformance;
(ii) dispute resolution mechanisms to settle disputes between the parties; and
(iii) a periodic review of the agreement once every three years, in the case of an agreement for longer than three years; and

(b) may be incorporated into any service delivery agreement or procurement contract to be concluded with the service provider.

Access to agreements granting rights to use, control or manage municipal capital assets

46. An agreement granting a right to use, control or manage a capital asset to a private sector party or organ of state -

(a) must be made available in its entirety to the council of the relevant municipality or to the council of the parent municipality of the relevant municipal entity; and

(b) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

CHAPTER 5
GENERAL MATTERS

Gains, losses and associated costs not budgeted for to be included in adjustments budgets

47. Any gain that will be realised or any loss and all associated costs that will be incurred by a municipality or municipal entity in respect of the transfer or disposal of, or the granting of a right to use, control or manage, an asset, if not budgeted for in the approved annual budget of the municipality or entity, must be included in the next adjustments budget of the municipality or entity referred to in section 28 and 87 of the Act, respectively.

Assets to remain subject to all existing encumbrances, rights and servitudes

48. The transfer of an asset, or the granting of a right to use, control or manage an asset, in terms of these Regulations does not affect any existing encumbrances, rights and servitudes attached to the asset.

Transfer or disposal of and rights granted in respect of assets to be effected in accordance with the law

49. The transfer or disposal of an asset or the granting of a right to use, control or manage an asset in terms of these Regulations must be given effect to and formalized in accordance with any legislation applicable to such transfers, disposals or granting of rights.

Exemptions

50. These Regulations do not apply to -

(a) any security or guarantee provided by a municipality or municipal entity to a lender or a representative nominated by a lender and that is used as collateral for ally borrowings by the municipality or entity in terms of section 48 of the Act;

(b) the transfer by a municipality or municipal entity of moneys owed by consumers to a collector appointed in terms of the supply chain management policy of the municipality or entity to enable the collector to collect amounts due to the municipality or entity;

(c) cash deposited in a bank account in the name of a municipality or municipal entity or an investment made in terms of the investment policy of a municipality or entity referred to in the Municipal Investment Regulations, published by Government Notice R.308 of 2005;

(d) a security deposit made in the name of a municipality or municipal entity that is required for goods or services acquired in terms of the supply chain management policy of a municipality or entity; or

(e) a prepayment that is made in terms of short-term insurance or any other related services acquired in terms of the supply chain management policy of a municipality or municipal entity.

9 IMPLEMENTATION OF THIS POLICY

This policy shall be implemented once approved by Council. All future asset management must be done in accordance with this policy.

This policy must be reviewed whenever it is a required in terms of operational- or legislative changes or as a result of audit requirements.

APPENDIX A

SCHEDULE OF EXPECTED USEFUL LIVES OF ASSETS

INFRASTRUCTRE ASSETS

ELECTRICITY:

	ASSET LIFE
Power stations	30
Cooling towers	30
Transformar kiosks	30
Meters	20
Load control equipment	20
Switchgear	20
Supply and reticulation networks	20
Main supply	20

ROADS:

	ASSET LIFE
Motorways	15
Other roads	10
Traffic islands	10
Traffic lights	20
Street lights	25
Overhead bridges	30
Stormwater drains	20
Bridges, subways and culverts	30
Car parks	20
Bus terminals	20

WATER

	ASSET LIFE
Meters	15
Mains	20
Rights	20
Supply and reticulation networks	20
Reservoirs and storage tanks	20

COMMUNITY ASSETS

RECREATIONAL FACILITIES

	ASSET LIFE
Bowling greens	20
Tennis courts	20
Swimming pools	20
Golf courses	20
Jukskei pitches	20
Outdoor sport facilities	20
Organ	20
Lakes and dams	20
Fountains	20
Flood lights	20

GAS:

	ASSET LIFE
Meters	20
Main supply	20
Storage tanks	20
Supply and reticulation networks	20

SEWERAGE:

	ASSET LIFE
Sewer mains	20
Outflow sewers	20
Sewerage purification works	20
Sewerage pumps	15
Sludge machines	15

PEDESTRAIN MALLS:

	ASSET LIFE
Footways	20
Kerbing	20
Paving	20

	ASSET LIFE
AIRPORTS:	20
Taxiways	20
Runways	20
Aprons	20
Airport and radio beacons	20

SECURITY

	ASSET LIFE
Fencing	3
Security systems	5
Access control systems	5

COMMUNITY ASSETS

BUILDINGS

	ASSET LIFE
Ambulance stations	30
Aquariums	30
Beach developments	30
Care centres	30
Cemeteries	30
Civic theatres and community centres	30
Clinics and hospitals	30
Game reserves and rest camps	30
Stadiums and indoor sports	30
Museums and galleries	30
Parks and public conveniences	30
Recreational centres and zoo	30

SCHEDULE OF EXPECTED USEFUL LIVES OF ASSETS

OTHER ASSETS

BUILDINGS	
Abattoirs	30
Asphalt plant	30
Cable stations	30
Caravan Parks	30
Bioscope	30
Compacting stations	30
Hostels for public / tourists	30
Hostels for employees	30
Housing schemes	30
Kilns	30
Laboratories	30
Markets	30
Nurseries	30
Office buildings	30
Old age homes	30
Quarries	30
Tip sites	30
Training centres	30
Transport facilities	30
Workshops and depots	30
OFFICE EQUIPMENT	
Computer hardware	5
Computer software	3-5
Office machines	3-5
Air conditioners	5-7
FURNITURE AND FITTINGS	
Chairs	7-10
Tables and desks	7-10
Cabinets and cupboards	7-10
Sundry	7-10
BINS AND CONTAINERS	
Household refuse bins	5
Bulk refuse containers	10

OTHER ASSETS

EMERGENCY EQUIPMENT	
Other fire fighting equipment	15
Ambulances	5-10
Fire hoses	5
Emergency lights	5
MOTOR VEHICLES	
Fire engines	20
Buses	15
Motor vehicles	5-7
Motorcycles	3
Trucks and light delivery vehicles	5-7
AIRCRAFT	15
WATERCRAFT	15
PLANT AND EQUIPMENT	
Graders	10-15
Tractors	10-15
Mechanical horses	10-15
Farm equipment	5
Lawn mowers	2
Compressors	5
Laboratory equipment	5
Radio equipment	5
Firearms	5
Telecommunication equipment	5
General	5
Cable cars	15
Irrigation systems	15
Cremators	15
Lathes	15
Machining equipment	15
Conveyors	15
Feeders	15
Tippers	15
Pulverising mills	15