

7.3.2	REVIEW AND RESCISSION OF SEVERAL IN-PRINCIPLE APPROVALS TO LEASE MUNICIPAL OWNED PROPERTIES
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

25 March 2026

1. SUBJECT: REVIEW AND RESCISSION OF SEVERAL IN-PRINCIPLE APPROVALS TO LEASE MUNICIPAL OWNED PROPERTIES

2. PURPOSE

For Council to review and rescind several in-principle approvals for the leasing of Municipal Properties due to the approval being given by the Executive Mayor in consultation with the Executive Mayoral Committee and since no competitive process was followed.

3. DELEGATED AUTHORITY

Council.

4. EXECUTIVE SUMMARY

In May 2025 the Municipality received written comments from National Treasury on one of the applications to lease Municipal owned land. In essence Treasury is saying the following:

1. The fact that the Policy on the Management of Stellenbosch Municipality's Immovable Property makes provision for deviation from the competitive process is not in line with the Municipal Finance Management Act and the Municipal Asset Transfer Regulations. In terms of legislation deviation from the competitive process is not allowed and all disposals of Municipal land should have been dealt with in a fair and competitive manner; and
2. The delegation given to the Executive Mayor in consultation with the Executive Mayoral Committee to decide on the disposal of Municipal owned property for a period less than ten years is in contradiction with the Municipal Finance Management Act. This delegation was created and accepted by Council in the updated System of Delegations in June 2022. This delegation is unlawful and should be removed from the System of Delegations as the decision to dispose of municipal land can only be made by Council.
3. The delegation has allowed for the Executive Mayor in consultation with the Executive Mayoral Committee to make decisions which should have been dealt with under the Supply Chain Management Regulations. This delegation allowed for councillors to make decisions on supply chain processes which is strictly prohibited in terms of Section 117 of the Municipal Finance Management Act.

Several applications to lease Municipal land was considered by the Executive Mayor in consultation with the Executive Mayoral Committee and two by Council, and in-principle approvals were given pending the finalisation of a public participation process. All these approvals were given in contradiction with the Municipal Finance Management Act and Municipal Asset Transfer Regulations and therefore needs to be reviewed and rescinded. Due to severe staff shortages in the Property Management

Department over the last four years the public participation processes were not finalised and/or return items have not been prepared for final approval. Due to the fact that these approvals are not legal they cannot be implemented and therefore have to be rescinded. These in-principle approvals are for the following properties:

1. Stellenbosch Flying Club (Portion of Farm 502 Stellenbosch);
2. Stellenbosch Riding Club (Portion of Farm 502 Stellenbosch);
3. Technopark Parking (Portion of Erf 9190 Stellenbosch);
4. Happy Folks Parking (Portion of Erf 8116 Stellenbosch);
5. L'Abri Safehouse (Portion of Erf 3363 Stellenbosch);
6. Stellenbosch Animal Welfare (Portion of Farm 183 Stellenbosch);
7. Anglican Church La Motte (Erf 4 La Motte);
8. Joleen Pedro Shop (Portion of Erf 104 La Motte);
9. U-turn Homeless Shelter (Portion of Erf 235 Stellenbosch);
10. Mercedes Benz parking (Erf 52 Stellenbosch); and
11. Hanna Charity (Portion of Erf 7271 Stellenbosch); and
12. FLX-EV Mini-Bus Taxi Electric Charging Station (Portion of Erf 235 Stellenbosch)

5. RECOMMENDATIONS

- (a) that Council takes note of the comments received from National Treasury in that the Policy on the Management of the Stellenbosch Municipality's Immovable Property provides for the Municipality to deviate from a competitive process, which is not in line with the Municipal Finance Management Act and the Municipal Asset Transfer Regulations;
- (b) that Council takes note of the comments from National Treasury in that the delegations created in June 2022 allowing for the Executive Mayor in consultation with the Executive Mayoral Committee to decide over disposal of municipal land for a period of less than ten years is not in line with the Municipal Finance Management Act and that this could not have been delegated to the Executive Mayor in consultation with the Executive Mayoral Committee;
- (c) that the Property Management Department be tasked with the immediate update of the Property Management Policy;
- (d) that the delegation (EM85) to the Executive Mayor in consultation with the Executive Mayoral Committee be removed with immediate effect;
- (e) that the following in-principle approvals be rescinded:
 - 5.1 Stellenbosch Flying Club (Portion of Farm 502 Stellenbosch);

- 5.2 Stellenbosch Riding Club (Portion of Farm 502 Stellenbosch);
 - 5.3 Technopark Parking (Portion of Erf 9190 Stellenbosch);
 - 5.4 Happy Folks Parking (Portion of Erf 8116 Stellenbosch);
 - 5.5 L'Abri Safehouse (Portion of Erf 3363 Stellenbosch);
 - 5.6 Stellenbosch Animal Welfare (Portion of Farm 183 Stellenbosch);
 - 5.7 Anglican Church La Motte (Erf 4 La Motte);
 - 5.8 Joleen Pedro Shop (Portion of Erf 104 La Motte);
 - 5.9 U-turn Homeless shelter (Portion of Erf 235 Stellenbosch);
 - 5.10 Mercedes Benz parking (Erf 52 Stellenbosch); and
 - 5.11 Hanna Charity (Portion of Erf 7271 Stellenbosch); and
 - 5.12 FLX-EV Mini-Bus Taxi Electric Charging Station (Portion of Erf 235 Stellenbosch)
- (f) that the Property Management Department be tasked with bringing the items for these properties back as soon as the Policy has been finalised.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Property Management Policy

The policy was first tabled before the Executive Mayoral Committee as far back as 2013, whereafter the policy was workshopped and the draft policy was approved by Council on 23 April 2014 as a Draft Policy, subject to Public Participation. A public participation process was followed and after considering the inputs received a second draft was placed before Council for consideration on 20 August 2014. Council referred the matter back to the Administration.

On 23 September 2014 the policy was re-submitted to Council and Council resolved that an Ad Hoc Committee be established which committee, under the guidance of experts will investigate the policy before bringing same back to Council. This was done and on 15 June 2016 a third draft of the policy was before Council. During this period the law firm Webber Wentzel was approached and asked for input, which they gave. The updated draft Policy was approved subject to a further round of public participation. Webber Wentzel again filed inputs on the Policy. The third draft of the Policy was approved by Council with immediate effect on 13 March 2018 and has been in operation and implemented since then.

National Treasury has suggested in their comments on the application for extension of the lease for the Flying Club that the Municipality review and update this Policy, which process is underway.

6.1.2 Delegation to the Executive Mayor in consultation with the Executive Mayoral Committee

The current System of Delegations was first approved by Council on 25 September 2019. It was re-adopted on 23 November 2021.

On 22 June 2022 an amended version was accepted by Council. It is in this version that the delegation is given to the Executive Mayor in consultation with the Executive Mayoral Committee to make decisions on the disposal of Municipal land for a period less than ten years.

6.2 Discussion**6.2.1 In-principle approvals to be set aside**

Since the inception of the Policy and the delegation several in-principle approvals were given by the Executive Mayor in consultation with the Executive Mayoral Committee and two others in-principle approvals were given by Council. All of these resolutions included a public participation process whereafter the items should have returned to the Executive Mayoral Committee meeting or Council meeting. Due to the fact that there has been a severe staff shortage in the Property Management Department these public participation processes did not take place or return items have not been finalised. As these approvals were given in contradiction with legislation it can't be implemented and needs to be set aside. These in-principle approvals are for the following leases:

1. Stellenbosch Flying Club (Portion of Farm 502 Stellenbosch);
2. Stellenbosch Riding Club (Portion of Farm 502 Stellenbosch);
3. Technopark Parking (Portion of Erf 9190 Stellenbosch);
4. Happy Folks Parking (Portion of Erf 8116 Stellenbosch);
5. L'Abri Safehouse (Portion of Erf 3363 Stellenbosch);
6. Stellenbosch Animal Welfare (Portion of Farm 183 Stellenbosch);
7. Anglican Church La Motte (Erf 4 La Motte);
8. Joleen Pedro Shop (Portion of Erf 104 La Motte);
9. U-turn Homeless shelter (Portion of Erf 235 Stellenbosch);
10. Mercedes Benz parking (Erf 52 Stellenbosch);
11. Hanna Charity (Portion of Erf 7271 Stellenbosch); and
12. FLX-EV Mini-Bus Taxi Electric Charging Station (Portion of Erf 235 Stellenbosch)

6.2.2 Deviation from competitive process and delegation to Executive Mayor in consultation with the Executive Mayoral Committee:

The Property Management Policy which was adopted in 2018 allowed for the Municipality and Council to deviate from a competitive process. In terms of paragraph 9.2.2 of the Policy, the Municipal Council may dispense with the prescribed, competitive process, and may enter into a private treaty agreement through any convenient process, which may include direct negotiations, but only in specific circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed.

This is in direct contradiction with the requirements set out in the Municipal Finance Management Act, the Municipal Asset Transfer Regulations and the Constitution which all indicate that the disposal of Municipal land should be done by way of a fair, equitable, transparent, cost effective and competitive process.

In June 2022 the amended System of Delegations was adopted by Council. A new delegation was added as delegation EM85 which reads that the "approval of lease agreement of Council properties for a period shorter than 10 years and a contract value of less than R5 million" is delegated from Council to the Executive Mayor in consultation with the Executive Mayoral Committee. This also includes cessions of such agreements to other parties within the original contract period.

This is in direct contradiction with the requirements set out in the Municipal Finance Management Act and Municipal Asset Transfer Regulations, which clearly dictates that the disposal of Municipal properties cannot be delegated and is always a Council decision. (Please note that in the definitions in the Municipal Asset Transfer Regulations "disposal" includes long-term leases and "long-term" is defined as a period of longer than three years.)

A further issue is that it is in contradiction with the Municipal Finance Management Act in that it has allowed for councillors to make decisions on supply chain processes. Section 117 of the Municipal Finance Management Act specifically state that no councillor may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer. The granting of lease agreements should be dealt with in accordance with the Supply Chain Management Regulations and Supply Chain Management Policy as it is seen as a supply chain process which is an administrative function and no councillor may therefore be involved. Council can only make the decision that the land is not needed to provide the minimum level of municipal services and that a competitive process should be followed to determine who the successful bidder is. Council can't determine WHO the successful bidder is.

Based on the above the in-principle decisions listed above all have to be rescinded.

6.2.5 Legal requirements**6.2.5.1 Asset Transfer Regulations****6.2.5.1.1 Granting of rights to use, control or manage a capital asset**

In terms of Regulation 34, a municipality may grant a right to use, control or manage a capital asset only after:

- 1)a) The accounting officer has, in terms of Regulation 35, concluded 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 R10m; and
 - b) a long-term right is proposed.
- 3)a) Only a Municipal Council may authorise the public participation process referred to in sub-regulation (a)
- b) a request to the Municipal Council for the authorisation of a public participation process must be accompanied by an Information Statement*, stating:
 - i) the reason for the proposal to grant a long term right to use, control or manage the relevant capital asset;
 - ii) any expected benefit 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.

6.2.5.1.2 Public participation process for granting of long-term rights

In terms of Regulation 35, if a Municipal Council has in terms of Regulation 34(3)(a) authorised the Accounting Officer to conduct a public participation process in connection with any proposed granting of a long term right of 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 Sub-regulation 34(1)(b) is to be considered (i.e. in principle decision)

- a) In accordance with Section 21A of the Municipal Systems Act:

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- i) Make public the proposal to grant the relevant right together with the Information Statement referred to in Reg 34(3)(b); and
 - ii) invite the local community and 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 National Treasury or the relevant Provincial Treasury on the matter.

6.2.5.1.3 Consideration of proposals

In terms of Regulation 36, the Municipal Council must, when considering in terms of Regulation 34(1)(b) the approval of any such right, take into account:

- a) whether such asset may be required for the municipality's own use during the period for which such right is to be granted;
- b) the extent to which any compensation to be received will result in a significant economic or financial benefit to the municipality;
- c) the risks and rewards associated with such right to use;
- d) any comments received from the local community and other interested persons;
- e) any written views and recommendations by National and Provincial Treasury;
- f) the interests of any 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.

6.2.5.1.4 Conditional approval of rights

In terms of Regulation 40, an approval in principle in terms of Regulation 34(1) (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.

6.2.5.1.5 Granting of rights to be in accordance with disposal management system

In terms of Regulation 41, if an approval in principle has been given in terms of regulation 34 (1)(b), the municipality may grant the right only in accordance with the disposal management system* of the municipality, irrespective of:-

- a) the value of the asset; or
- b) the period for which the right is granted; or
- c) whether the right is to be granted to a private sector party or organ of state.

6.2.5.2 Municipal Finance Management Act

In terms of Section 14(2), a Municipality may transfer ownership or otherwise dispose of a capital asset, but only after the Municipal Council, in a meeting open to the public –

- a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
- b) has considered the fair market value of the asset.

In terms of sub-section (5) any transfer of ownership of a capital asset in terms of sub-section (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.

In terms of Section 117 no councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

6.2.5.3 Policy on the Management of Council owned property**6.2.5.3.1 Competitive process**

In terms of paragraph 7.2.1, unless otherwise provided for in the policy, the disposal of viable immovable property shall be affected by means of a process of public competition.

In terms of paragraph 9.1.1 of the Policy, the type of a formal tender may vary, depending on the nature of the transaction:

- i) Outright tender may be appropriate where the Immovable property ownership is not complex, and the Municipality is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.
- ii) Qualified tenders/call for proposals will be appropriate where the Immovable property ownership position is complex or the development proposals for the Immovable property are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage.
- iii) Call for proposals on a build-operate transfer (B.O.T) basis will be used if a developer is required to undertake the construction, including the financing, of a facility on Municipal-owned land, and the operation and maintenance thereof. The developer operates the facility over a fixed term during which it is allowed to charge facility users appropriate fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract, to enable the developer to recover its investment and operating and maintenance expenses in the project. The developer transfers the facility to the municipality at the end of the fixed term.

6.2.5.3.2 Deviation from competitive process

In terms of paragraph 9.2.2 of the Policy, the Municipal Council may dispense with the prescribed, competitive process, and may enter into a private treaty agreement through any convenient process, which may include direct negotiations, but only in specific circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed.

The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

- a) Due to specific circumstances peculiar to the property under consideration, it can only be utilized by the one person/organisation wishing to enter into the Property Transaction;
- (e) in exceptional cases where the Municipal Council is of the opinion the public competition would not serve a useful purpose or that it is in the interest of the community and the Municipality. In such cases reasons for preferring such out of hand sale or lease to those by public competition must be recorded”.
- l) lease contracts with existing tenants of immovable properties, not exceeding ten (10) years, may be renegotiated where the Executive Mayor is of the opinion that public competition would not serve a useful purpose or that renewal is aligned with the Municipality's strategic objectives and in the interest of the Community, subject to such renewal being advertised calling for public comment. The existing tenant shall give notice of the intention to renegotiate the lease at least six months before the date of termination;

The reasons for any such deviation from the competitive disposal process must be recorded.

*This section of the Policy is the section that National Treasury is suggesting to be reviewed and brought in line with the Municipal Finance Management Act and the Municipal Asset Transfer Regulations.

6.3 Financial Implications

The lease agreements will not be implemented and therefore no income will be received for some these properties.

6.2 Legal Implications

The legal implications are discussed throughout the item.

6.3 Staff Implications

The Property Management Department will have to update the Policy, and the Director Corporate Services will have to update the delegations.

6.4 Previous / Relevant Council Resolutions**16TH COUNCIL MEETING: 2018-03-28: ITEM 7.5.1 RESOLVED (nem con)**

that the Draft Policy on the Management of Stellenbosch Municipality's Immovable Property, hereto attached as APPENDIX 3 as amended, be approved with immediate effect.

SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.3 RESOLVED (nem con)

- (a) that Council adopts the attached amended System of Delegations as set out in APPENDIX 1 as the primary source of the delegations from 1 July 2022;
- (b) that Council takes note that by-laws or policies which are in the process of being revised and that is not included in the delegations, will be taken up in the delegations administratively after the approval of the amended by-law or policy and the current delegations attached to those bylaws and policies remains in affect till such time it is revised; and
- (c) that all political office bearers, political structures, the Municipal Manager, Directors, Senior Managers, Managers, Heads of departments and all other identified officials be hereby authorised to exercise on behalf of Council the delegated powers designated to them in terms of APPENDIX 1

6.5 Risk Implications

The risks are addressed in the item.

6.6 Comments from Senior Management

No comments received.

ANNEXURES:**Annexure 1: Comments received from National Treasury**

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