

THEEWATERSKLOOF MUNICIPALITY

POLICY FOR THE LEASE/SALE OF PUBLIC PATHS AND REDUNDANT LAND

INTRODUCTION

In the past applications have been received from residents abutting public paths and redundant municipal land, which includes unused road reserve, for their respective closure, purchase and lease of such land.

The applications to lease or purchase received from property owners abutting public paths was as a result of individuals causing a public nuisance by consuming alcohol, causing noise pollution, verbal abuse, assaulting and bodily harm to others, and other public atrocities and crimes within these public pathways.

Some applicants want to lease/buy redundant land for conservation purposes whereby alien vegetation and rubble will be removed and area better supervised (ownership).

THE LEGAL PROVISIONS

Legal authority and process for the closure of public paths;

The definition of a public path is given in terms of the Ordinances/*Transport / Roads Ordinance No. 19 of 1976 /2 as follows, the definitions.—In this ordinance, unless inconsistent with the context— /“public path” means a public path proclaimed as such in terms of section 3; “public path” means a public path proclaimed as such in terms of section 3;*

Furthermore section 3 of the ordinance determines as follows;

“3. Power of Administrator to declare, close or divert public roads and public paths.—

(1) The Administrator may, subject to the provisions of subsection (3), and either—

(a) of his own accord;

(b) on the application of a divisional council in the case of—

(i) a proposed or existing main road, divisional road, minor road or public path in the rural area of such divisional council;

(ii) a proposed or existing main road, divisional road, minor road or public path in an outer municipal area which falls under the jurisdiction and control of a municipal council other than a village council and which is situate in the divisional area of such divisional council, or

(iii) a proposed or existing main road, divisional road, minor road or public path in a municipal area which falls under the jurisdiction and control of a village council and which is situate in the divisional area of such divisional council, or

(c) on the application of—

(i) the municipal council of the Municipality of Walvis Bay in the case of a proposed or existing main road in the municipal area of such municipal council, or

(ii) any other municipal council (other than a village council) in the case of a proposed or existing main road in the inner municipal area of such other municipal council,

[Para. (c) substituted by Proc. 87 of 1978.]

by proclamation in the Provincial Gazette declare that—

(i) there shall be a public road or public path along a line where no public road or public

path exists;

(ii) an existing public road shall be a public path or that an existing public path shall be a public road;

(iii) an existing public road or public path or portion thereof shall be closed or diverted to the extent specified in such proclamation;

(iv) the former route of a public road or public path or portion thereof which has been diverted as contemplated by paragraph (iii) shall remain in existence as a public road or public path, or

(v) an existing public street shall be a public road or public path.

(2) *The Administrator may, either of his own accord or on the application of the road authority concerned but in either case subject to the provisions of subsection (3), by proclamation in the Provincial Gazette withdraw any proclamation issued in terms of subsection (1)*

(3) *No proclamation contemplated by subsection (1) or (2) shall be issued unless—*

(a) the Administrator or the council concerned, as the case may be, has advertised, in the case of the Administrator, his intention to issue such proclamation or, in the case of such council, its intention to apply to the Administrator for the issue of such proclamation and has, in the case contemplated by subsection (1) (i), specified the proposed classification of the proposed public road in the advertisement hereinbefore contemplated;

(b) copies of the advertisement contemplated by paragraph (a) have been served—

(i) on the owners of all land abutting on the proposed or existing public road or public path or over which the proposed or existing public road or public path will pass or passes;

(ii) in the case of the closing or diversion of a public road or public path which would injuriously affect the continued existence of such public road or public path in the area of jurisdiction of any other road authority, on such other road authority, and

(iii) in the case of a proclamation contemplated by subsection (1) (a), on council or road authority concerned, as the case may be, not later than twenty-one days before the date by which objections are required to be lodged in accordance with the said advertisement together with, in the case of a proclamation contemplated by paragraph (i) or, in the case of a diversion, paragraph (iii) of subsection (1), a sketch map showing the approximate location and route of the proposed public road or public path or of the public road or public path or portion thereof which is proposed to be diverted, as the case may be;

[Sub-para. (iii) amended by s. 1 (a) of Ord. 18 of 1977.]

(c) in any case contemplated by subsection (1) (b) or (c) and in every case in which a council has applied in terms of subsection (2) for the withdrawal of a proclamation issued in terms of subsection (1), the council concerned has transmitted the objections (if any) lodged in accordance with the said advertisement to the Administrator together with its comments thereon and a copy of such advertisement; and

[Para. (c) amended by s. 1 (b) of Ord. 18 of 1977.]

(d) in the case of a public road or public path contemplated by subsection (1) (i) or of a diversion contemplated by subsection (1) (iii) where the route of such public road, public path or diversion will pass over land—

(i) which has been or is deemed to have been proclaimed under the Mining Rights Act, 1967 (Act 20 of 1967), but which has not been reserved for the purposes of such public road, public path or diversion in terms of the said Act;

(ii) which is held by any person under mining title as defined in the said Act but which has not been reserved for the purposes of such public road, public path or diversion in terms of the said Act, or

(iii) which has been proclaimed an alluvial digging under the Precious Stones Act,

1964 (Act 73 of 1964), or under any prior law relating to precious stones, the Minister of Mines has approved the issue of such proclamation;

[Para. (d) inserted by s. 1 (c) of Ord. 18 of 1977.]

provided that the preceding provisions of this subsection shall not apply in respect of the first proclamation issued in terms of subsection (1) on or after the first day of April 1978, in relation to the public roads which were, immediately prior to such first day, in existence in the municipal area of the Municipality of Walvis Bay.

[Proviso to sub-s. (3) inserted by Proc. 87 of 1978.]

- (3A) All expenditure incurred by a road authority in consequence of or in connection with an application for the proclamation of a minor road, including the expenditure incurred in publishing the advertisement contemplated by subsection (3) (a) and (b) (i), may be recovered by such road authority, in such proportions as such road authority may determine, from the owners of properties who, in the opinion of such road authority, will benefit by the construction of such minor road.
[Sub-s. (3A) inserted by s. 1 of Ord. 11 of 1978.]
- (4) In any proclamation issued under subsection (1) the Administrator may determine the location and route of any public road or public path or any portion or diversion thereof by declaring that such location and route shall be as indicated on a plan filed in a specified office or by describing such location and route in such proclamation.
- (5) Subject to the terms of any proclamation contemplated by subsection (1) (iv), the former route of every public road or public path which has been closed or diverted shall cease to be a public road or public path or portion thereof; provided that if a public road or public path or portion thereof which is also a public street is closed or diverted, the former route of such public road or public path shall not thereby cease to be a public street.
- (6) Every diversion of a public road or public path or portion thereof shall, subject to the terms of any proclamation in terms of subsection (1) or any notice issued in terms of section 4—
(a) in the case of a public road or portion thereof which has been diverted, be deemed to be a public road or portion of a public road of the same classification as that which applied to the diverted public road or portion thereof immediately prior to the issue of the relevant proclamation in terms of subsection (1) (iii), and
(b) in the case of a public path which has been diverted, be deemed to be a public path.
- (7) (a) The owner of land which abuts on any existing minor road or public path or portion thereof or over which such minor road or public path or portion passes and who desires to have such minor road or public path closed or diverted shall apply in writing for the closing or diversion thereof to the road authority concerned which shall, on receipt of such application, comply mutatis mutandis with the provisions of subsection (3) (a) and (b) (i) and (ii) in respect thereof and thereafter transmit such application together with the objections (if any) lodged in accordance with the advertisement contemplated by subsection (3), its comments on such application and such objections and a copy of such advertisement to the Administrator who may—
(i) refuse such application, or
(ii) grant such application and issue the necessary proclamation in terms of subsection (1).
- (b) All expenditure incurred by the road authority in consequence of or in connection with an application contemplated by paragraph (a), including the expenditure incurred in publishing the advertisement contemplated by subsection (3), shall be recoverable from the applicant by such road authority.

Public participation- Chapter 4 of the Municipal Systems Act, Act 32 of 2000/;

In terms of the MSA when the council wishes to communicate with its community the provisions of article 21 of the said supplies guidance:

21. Communications to local community.—

- (1) *When anything must be notified by a municipality through the media to the local community in terms of this Act or any other applicable legislation, it must be done—*
 - (a) *in the local newspaper or newspapers of its area;*
 - (b) *in a newspaper or newspapers circulating in its area and determined by the council as a newspaper of record; or*
 - (c) *by means of radio broadcasts covering the area of the municipality.*
- (2) *Any such notification must be in the official languages determined by the council, having regard to language preferences and usage within its area.*
- (3) *A copy of every notice that must be published in the Provincial Gazette or the media in terms of this Act or any other applicable legislation, must be displayed at the municipal offices.*
- (4) *When the municipality invites the local community to submit written comments or representations on any matter before the council, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the municipality named in the invitation, will assist that person to transcribe that person's comments or representations.*
- (5) (a) *When a municipality requires a form to be completed by a member of the local community, a staff member of the municipality must give reasonable assistance to persons who cannot read or write, to enable such persons to understand and complete the form.*
 - (b) *If the form relates to the payment of money to the municipality or to the provision of any service, the assistance must include an explanation of its terms and conditions.*

Legal provisions of Section 14 of the MFMA (Act 56 / 2003) for the sale or lease of council property:

The sale/lease of Council property must be considered in terms of Section 14 of the MFMA (Act 56 / 2003) and is set out as follows:

14. *Disposal of capital assets.*-(1) *A Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the **minimum level of basic municipal services**.*
- 14(2) *A Municipality may transfer ownership or otherwise dispose of a capital asset other than on contemplated in subsection (1), 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 and the **economic and community value** to be received in exchange for the asset.*
- 14(5) *Any transfer of ownership of a capital asset in terms of subsection (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.*

Unsolicited bids

113. (1) A municipality or municipal entity is not obliged to consider an unsolicited bid received outside its normal bidding process.
- (2) If a municipality or municipal entity decides to consider an unsolicited bid received outside a normal bidding process, it may do so only in accordance with a prescribed framework.
- (3) The framework must strictly regulate and limit the power of municipalities and municipal entities to approve unsolicited bids received outside their normal tendering or other bidding processes.

Municipal Supply Chain Management Policy

Unsolicited bids are further regulated in Article 37 of the Municipal Supply Chain Management Policy.

PROCESS TO CONSIDER UNSOLICITED OFFERS THE CLOSURE OF AND SALE OF PUBLIC PATHS AND OTHER REDUNDANT LAND:

It is legally accepted that the legislature did not intend to include the sale of assets (public path and redundant land) as defined in article 113 of the MFMA and Article 37 of the SCM policy for unsolicited bids. However these legal provisions set out a process to be followed to consider unsolicited offers.

Which process is to be adapted and applied for unsolicited offers from abutting owners to purchase redundant land, public paths, road reserve or other portions of municipal land in order to adhere to article 14 (5) of the MFMA.

It must further be accepted that the provision for the transfer of ownership to be **competitive** will be restricted mostly to only the abutting owners because of their geographic location and size.

Application for the closure of proclaimed public paths:

In order for the council to consider an application for the closure a public path either on its own accord or through an application received from an owner (s) abutting a public place the following process needs to be followed:

1. A full written report must be submitted by the applicant and the applicable application fee (which includes advertisement costs) paid by the applicant setting out the full reasons for the application as well as the comments, support and objections of all the abutting property owners.
2. The application to close and an offer to purchase or lease the public path must be advertised in the local press and placed on all notice boards of the corporate offices as well as the respective town office and libraries as is the custom. Notices must also be served / issued to the immediate surrounding property owners per registered post.
3. The application together with public comments will be considered by the corporate departments and forwarded to the Ward committee for their consideration and comments.
4. A report will thereafter be forwarded to council for their consideration, and if the outcome is in favour of the closure to recommend the closure of the public path to the Premier of the Western-Cape, which application is to be handled as prescribed in the Road Ordinance.
5. The applicant is responsible for all advertising, postage and any other costs that may be incurred by this council as a result of his / her application, which must be paid in advance with the submission of his or her application.
6. The applicant must further note that all expenditure incurred by the road authority (Western Cape Provincial Administration) in consequence of or in connection with an application for the closure of a public path, including the expenditure incurred in

publishing the advertisement contemplated, shall be recoverable from the applicant by such road authority.

Application to purchase un-proclaimed public paths, redundant land (road reserve or other portions) other than a public path:

Definition of redundant land:

These are portions of land that abut adjoining land and which can not be developed or used (on their own) for any other use because of their size or geographic location and can be consolidate to abutting property.

Process for the lease of redundant land:

In order for the council to consider an application for the closure of an unproclaimed public path / redundant land either on its own accord or through an application received from an owner (s) abutting, the following process needs to be followed:

1. A full written application (as provided) must be submitted and the applicable application fee (which includes advertisement costs) paid by the applicant, setting out the full reasons for the application to **lease** the land.
2. The comments, support, and objections of the surrounding property owners must be included in the application.
3. The application to **lease** must be advertised in the local press and placed on all notice boards of the corporate office as well as the respective town offices and libraries. Notices to be served / issued to the immediate surrounding property owners per registered post.
4. A report to the Ward committee must be compiled for the application setting out the application received together with, the market related rent for the **lease** of the land, all public comments made, the consideration, and comments of the corporate departments for the ward to consider and comment on. In cases where the applicable Ward Committee do not approve the lease to be entered into the application must be submitted to the Executive Mayor and his Committee for consideration.
5. The applicant is responsible for all costs regarding rezoning, if applicable.
6. That Council consider any valid objection(s) received from parties apposing the **lease** of the land in terms of article 62 of the Municipal Systems Act, Act 32 of 2000.
7. If no objections are received the necessary administrative processes are to be followed for the **leasing** of the municipal property.
8. That the power be delegated to the Director Development Services to enter into lease agreements and to consider and set a market rental.
9. The **lease** application must be approved by the Director Development in conjunction with the Directors Technical Services and Operations.

10. The applicant must declare in writing whether financial gain shall be obtained from the lease of the land or not. If so, the matter will be dealt with in terms of the Municipal Financial Management Act (Act 56 of 2003) and the TWK Asset Management Policy.
11. In cases where the land size is more than 1 Hectare, the application has to be submitted to Council for consideration.
12. In cases where the rent is determined at less than 60% of the market related rent, the rental must be submitted to the Council for consideration and adjusted quarterly.

Process for the sale of redundant land:

In order for the council to consider an application for the closure of an unproclaimed public path / redundant land either on its own accord or through an application received from an owner (s) abutting, the following process needs to be followed:

1. A full written application (as provided) must be submitted and the applicable application fee (which includes advertisement costs) paid by the applicant, setting out the full reasons for the application to **purchase** the land.
2. The comments, support, and objections of the surrounding property owners must be included in the application.
3. The application to **purchase** must be advertised in the local press and placed on all notice boards of the corporate office as well as the respective town offices and libraries. Notices to be served / issued to the immediate surrounding property owners per registered post.
4. A report to the Ward committee must be compiled for the application setting out the offer received together with, the market value for the **sale** of the land, all public comments made, the consideration, and comments of the corporate departments for the ward to consider and comment on.
5. The report will thereafter be forwarded to council for their consideration, and if the outcome is favourable, a notice must be placed in the local press of councils intention to **sell** the said portion of land to the applicant with full disclosure made to the name of the applicant, the size and location of the land, the selling price of the land together with an objection period of 30 days.
6. The applicant is responsible for all costs regarding subdivision and rezoning, if applicable.
7. That Council consider any objection(s) received from parties apposing the **sale** of the land in terms of article 62 of the Municipal Systems Act, Act 32 of 2000.
8. If no objections are received the necessary administrative processes are to be followed for the **sale** of municipal property.

APPLICATION FORM:

FOR THE LEASE OR BUY OF PUBLIC PATHS OR REDUNDANT LAND

*(An administration fee of R600,00 is payable **in advance** to cover the cost of advertising and postage of notices to all directly effected residents)*

Name of Applicant

Residential Address

Erf Number

Tel and Cell No.

Application to **buy**

Application to **lease**

 Application to close proclaimed **public path**.

Application to close **unproclaimed public path** or
redundant land.

 Description of property (Portion of Erf)

Size of property to be considered (.....m²)

Reason/s for application.

Support/Objections/Comments of Neighbours (only registered property owners may comment)

Erf No	Address	Name and Signature	Tel / Cell No
<div style="padding-left: 20px;"> <input type="checkbox"/> Approve <input type="checkbox"/> Disapprove </div> <p><u>Comments</u></p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>			

Erf No	Address	Name and Signature	Tel / Cell No
<input type="checkbox"/> Approve <input type="checkbox"/> Disapprove <u>Comments</u> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>			

Erf No	Address	Name and Signature	Tel / Cell No
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<input type="checkbox"/> Approve <input type="checkbox"/> Disapprove <u>Comments</u> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>			

Erf No	Address	Name and Signature	Tel / Cell No
<p data-bbox="284 353 550 414"><input type="checkbox"/> Approve</p> <p data-bbox="284 448 593 508"><input type="checkbox"/> Disapprove</p> <p data-bbox="231 537 383 571"><u>Comments</u></p> <hr data-bbox="231 638 1348 642"/> <hr data-bbox="231 689 1348 694"/> <hr data-bbox="231 741 1348 745"/> <hr data-bbox="231 797 1348 801"/> <hr data-bbox="231 853 1348 857"/> <hr data-bbox="231 909 1348 913"/>			

Declaration

I hereby declare that:

No financial gain shall be obtained from this lease/sale.

Financial gain shall be obtained from this lease/sale.

Attachments:

1. Any additional motivation or comments.
2. Sketch plan that indicates the property under consideration.
3. Copy of receipt.
4. Copy of identity document of applicant (only property owners may apply)

Please note:

1. In cases where the land size is more than 1 Hectare, the lease application has to be submitted to the Council for consideration.
2. All applications to buy land must be submitted to Council for consideration.