

# CHIEF DIRECTORATE STRATEGIC HOUSING SUPPORT

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## MEMORANDUM

To : Mr C Ntsele  
Acting Head of Department

Ms N Mthembu  
Chief Director : Project Management

Mr D B Dunstan  
Chief Director : Municipal Housing Support

1 September 2003

### POLICY DIRECTIVE : ACQUISITION OF LAND BY MUNICIPALITIES WITH HOUSING FUNDS

1. Various concerns have been raised regarding the acquisition of land by municipalities and the role of the department in this regard. These relate to issues such as the role of valuers, information required in respect of land audits, timing of valuations, etc. These concerns are valid where public funds are utilised.
2. Fruitless expenditure may be incurred where land is acquired by municipalities without the necessary land audits, suitability studies and valuations being concluded.
3. The revised Chapter 3 of the Housing Code describes various steps to be followed in acquiring land for development. There is also an existing valuation policy. The following directive is not intended to replace these existing policies, but rather to clarify the process in respect of land acquisition for housing development. This directive, thus, needs to be read in conjunction with the aforementioned documents and also the department's Preparation Funding guidelines, where applicable.
4. The following supporting documents are herewith attached for ease of reference:  
  
Annexure 1 - Summary diagram : Land Acquisition for Housing by Municipalities with Housing funds  
  
Annexure 2 - Flow diagram for the identification of land - extract from Revised Chapter 3 of the Code.  
  
Annexure 3 - Copy of Preparation Funding Guidelines.

5. DIRECTIVE

- (1) In terms of the revised Chapter 3 of the Code, a municipality identifies a housing need in terms of its integrated development plan (IDP) or housing delivery plan.
- (2) The department responds to this need by reserving subsidies for such a municipality in terms the Department of Housing's Strategic Plan.
- (3) Land is then identified by the municipality to deliver the required number of subsidies. In all instances the suitability of the land is to be confirmed in respect of geotechnical investigations, environmental impact assessments, and land legal issues. These are to be done in accordance with the specifications outlined in Chapter 3 of the Code. Preparation funding is available for this purpose, and applications may be submitted as outlined in the Provincial Department of Housing Preparation Funding guidelines.

Such land may either belong to the state, or be privately owned. These require slightly different approaches in securing land agreements, as follows:

- (i) State owned land which is suitable for development as confirmed by the necessary investigations, and which can be made available to the municipality for development.

In this regard market valuation is not applicable. The application will continue in terms of the normal approval process outlined in Chapter 3. However, the land issues must be detailed in the project description (also known as conditional approval) and feasibility study (also known as final approval). Land availability agreements should only be concluded on or after final approval by the MEC.

- (ii) State owned land which is not suitable for development or where there is no state land whatsoever, hence, a call for land is to be made. Details regarding the suitability of the land must be made available to the department. The call for land is to include all the measurable and desired outcomes, in accordance with Chapter 3 (i.e average land price, location, technical conditions, etc., as far as is possible), and is to guide the prioritisation and vetting process.
  - (a) The suitable land portions are prioritised and screened for technical feasibility (geotechnical, EIA and land audit). Preparation funding is available for this purpose. Applicants are required to present the relevant land information in the preparation funding submission and to liaise with the department's Land Administration component in this regard. Due to the double registration costs, land would not be acquired by the department and then transferred to the municipality. The responsibility for the acquisition of land would be that of the municipality but the department's Land Administration Component regional offices would assist the municipalities, where required. The department will make funds available to the municipality to acquire the land (only after final approval of th project by the MEC).
  - (b) The geotechnical, EIA and land audit information is to be forwarded to the independent valuers. The instructions to both valuers must be clear and in writing.

*The standard valuation policy of the department as prescribed by the former National Housing Commission entitled "Prosedurehandleiding : Verwerwing" (Procedure Manual : Acquisitions) issued by the Department of Public Works, circa 1990.*

*In terms of the aforementioned policy, when land is to be acquired for development purposes, two valuers registered with the South African Institute of Valuers are to be appointed with identical letters of instruction setting out the purpose of the valuation and the valuation technique required (ie. actual, potential, intrinsic or sentimental value) including factors such as financial loss, double recovery, comparative or market approach.*

*The valuers are to each provide independent reports but in an effort to prohibit the valuations differing by vast amounts, valuers are encouraged to, during the physical inspection phase and comparable transaction phase of the valuation, exchange information and ideas.*

*The valuations are not to differ by more than the 10% stipulated by abovementioned policy as it is acknowledged that property valuation is not an exact science and that it cannot be expected that two valuations will achieve an identical end result. Should the valuations differ by more than the stipulated amount, then the two valuers are to be instructed to meet in order to reach a compromise and/or consensus on the valuation.*

*Should this not be at all possible, a third valuer needs to be appointed, to perform a control valuation, taking into consideration the reports of the other two appointed valuers.*

*Section 25 of the Constitution Act No 108/1996 prescribes the manner in which property is to be dealt with and stipulates that property can only be expropriated for a public purpose and in the public interest. Compensation shall be paid for the taking of a right in property which must be just and equitable and a range of factors need to be considered in determining compensation. Such factors being :*

- The current use of the property*
- The history of the acquisition and use of the property*
- The market value of the property*
- The extent of state investment in the property*
- The purpose for which the property is to be used*

*Section 12 of the Expropriation Act No 63/1975 determines the basis on which compensation is to be determined and has similar factors to be considered.*

- (4) Where the land is found to be suitable, the normal project approval process is to be followed (i.e project description and feasibility). Land issues are to be audited by the land component, preferable at project description stage. At this stage application should also be made to the MEC via the Housing Advisory Committee (HAC) for a suspensive option to purchase private land and/or to enter into a land availability agreement with an organ of state, whichever is applicable.
- (5) Where private land is to be secured for housing purposes, such requirement must be outlined as part of the project feasibility report. Retrospective payment for land, which had not received up front approval for the purchase thereof from the MEC should not be considered as the relevant risk assessments may not have been concluded. Only after the MEC has granted final approval for a development project can application be made by the municipality for the acquisition of land by either purchase/sale or expropriation (both methods need higher authority when utilizing Department of Housing funding).

Such requests for approval by the MEC must be submitted to the Land Administration components of the regional offices which will prepare the necessary submissions for acquisition to the MEC.

The following information is required from the municipalities:

- (i) Council resolution granting approval for the municipality for the acquisition of specific land at a specific price as determined by independent valuers registered with the SA Institute of Valuers, as per the Department of Housing policy.
- (ii) Copies of the valuation certificates contained in the valuation reports and motivation why a specific valuation was preferred or how the proposed compensation has been determined if not as per valuations (within the limit set by the Department of Housing in its policy on valuations).
- (iii) Copy of subject property title deeds
- (iv) Copy of subject property Surveyor-General Diagram.
- (v) Motivation for acquisition of subject property, which must include motivation for specific property if other properties were also considered and reasons which determined preferred property.
- (vi) Indication of the municipal official who will be signing all documentation regarding the acquisition and under what legislation/authority/delegation.
- (vii) Confirmation that the necessary technical feasibility studies have been completed, and that the reports indicate that the land is suitable for housing development purposes.

Applications for the acquisition of land by municipalities need to be approved by Cabinet if utilising the KwaZulu-Natal Housing Act No. 8 of 2000. The MEC reserves the right to refer any applications, submitted in terms of any other legislation, to Cabinet for approval.

On approval for the acquisition of land by the municipality has been granted by such higher authority (either Cabinet/MEC when decided), such approvals must be returned to the land administration components within the regions, which will then notify the relevant municipality of such approval and give the necessary assistance if so required.

Final agreements are concluded on or after final approval by the MEC responsible for housing.

I trust that this will be of assistance to you.

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M M J GODLIMAN (MRS)  
CHIEF DIRECTOR  
STRATEGIC HOUSING SUPPORT

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DATE

Annexure 1

**LAND ACQUISITION FOR HOUSING BY MUNICIPALITIES WITH HOUSING FUNDS**

