

REAL ESTATE DEPARTMENT

LEASING POLICY FOR MUNICIPALLY OWNED IMMOVABLE PROPERTY

ITEM A-CORP (RE) (01-2013)

OVERSIGHT COMMITTEE REPORT ON EMM LEASING
STRATEGY AND POLICY

CM 30/04/2013

RESOLVED

1. **That** the contents of the report regarding the Ekurhuleni Metropolitan Municipality Leasing Strategy and Policy, **BE NOTED.**
2. **That** the Corporate Services Oversight Committee **SUPPORTS** the recommendations made by the Executive.
3. **That** Council **ADOPTS** the Ekurhuleni Metropolitan Municipality Leasing Strategy and Policy.
4. **That** urgency of implementing a centralised approach to, and standardised guidelines for, leasing of EMM owned assets **BE NOTED.**
5. **That** the EMM leasing strategy for municipally owned immovable property **BE APPROVED.**
6. **That** the EMM leasing policy for municipally owned immovable property **BE APPROVED**

EKURHULENI METROPOLITAN MUNICIPALITY

LEASING POLICY FOR MUNICIPALLY OWNED IMMOVABLE PROPERTY

(14 November 2012)



Ekurhuleni
METROPOLITAN MUNICIPALITY

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1. Purpose of the policy

The purpose of this policy is to provide a procedural and management framework for leasing of all municipally owned real estate assets in accordance with the EMM Supply Chain Management Policy, Local Government: Municipal Financial Management Act 2003 and associated regulations (Municipal Asset Transfer Regulations, Municipal Supply Chain Management Regulations).

At the time of writing, a number of policies were required to address the full spectrum of leasing matters in the city. This policy is intended to deal with the existing lease backlog which represents a sustained loss of revenue to the city. Apart from this policy, a document addressing leases where EMM is the lessee was considered to be an urgent priority. The latter document would extend the analysis and implications of EMM's overall fixed asset portfolio strategy and set out guidelines and processes for the application, management and termination of these lease contracts.

2. Objectives and high level principles

The leasing policy will:

- Facilitate equitable access to the city's immovable assets by applying the contents of section 217 of the Constitution of South Africa (which states that government procurement must be in accordance with a system which is fair, equitable, transparent, competitive and cost-effective)
- Enable lease transactions and leases to be processed in a legislatively compliant yet efficient manner
- Secure future financial gains for the city
- Support the city's social and environmental agendas by making provision for residents pursuing social and environmental activities to be granted access to real estate assets e.g. management of SRAC leases
- Support the city's economic development imperatives by:
 - Facilitating the expedited processing of leases with developmental impact
 - Aligning development with the strategic plans of the city
- Assist with the upkeep of properties in the portfolio insofar as maintenance requirements may be stipulated in rental agreements

3. Definition of terms

- **Bid** means an offer to lease a property from EMM at a specified rental
- **Bidder** means any person offering to lease a property owned by EMM
- **EMM** shall mean Ekurhuleni Metropolitan Municipality
- **Lessor** shall mean EMM
- **Lessee** shall mean user of the EMM immovable property
- **Lease** agreement shall mean contract between lessor and lessee
- **Lease** period shall mean the period of months/ years stipulated in the lease agreement
- **Termination** shall mean the termination of the lease agreement by either party (i.e. the lessee or lessor)
- **Valuation** shall mean the determination of the value of municipal immovable property and the applicable rental

All other terms shall have the same meaning as defined in standing legislation and associated regulations.

4. Legislative framework

This policy must be read in conjunction with the latest versions (including amendments) of the following legislation and regulations.

- Constitution of RSA, 1996
- EMM Supply Chain Management Policy, v3 2012 (EMM SCMP)
- Local Government: Municipal Finance Management Act, 2003 (MFMA)
- Municipal Assets Transfer Regulations, 2008 (MFMA ATR)
- Municipal Supply Chain Management Regulations, 2005 (MFMA SCMR)
- Local Government: Municipal Systems Act, 2000
- Local Government: Municipal Structures Act, 1998
- Local Government Ordinance 17 of 1939
- Local Government Municipal Property Rates Act of 2004

The EMM Leasing Strategy for Municipally Owned Immovable Property provides broader context and strategic rationale for this policy and is therefore a useful point of reference.

5. Scope

The policy applies to all leases of EMM owned immovable properties. The lease portfolio will consist of a variety of different types of leases based on both the usage and value of a particular asset as well as the term of the lease. Lease types are grouped into segments (see section 7) and dedicated processes are defined for each segment as detailed in section 8 below. The policy also includes an overall lease management framework (see section 9) that will apply to all leases. Leases where EMM is the lessee are excluded from the scope of this document.

6. Alignment with the Real Estate department

The Real Estate department's mission is to facilitate, through Ekurhuleni's real estate portfolio, the sustainable generation of social, environmental and economic returns for the city's residents. The leasing policy will support this mission by defining and simplifying lease processes as well as providing a framework for the on-going management of leases, to maximise the returns to the city and its residents.

Since leases will be processed within the property management division of the Real Estate department, all processes and frameworks of this policy inform the Real Estate department's strategy, structures and processes. The department must be able to execute processes in accordance with this policy.

7. Segmentation of leasing portfolio

7.1. Segmentation criteria

Legislation implies four important segmenting dimensions, some of which have been further divided to generate additional benefits for the city.

1. The **term of a lease** directly affects what processes have to be followed from both national and municipal legislative perspectives. According to the MFMA ATR, a long lease is defined as a lease with a term equal to

EMM Policy: Leasing policy for municipally Owned Property

or greater than 3 years. A long lease of a high value asset (asset valued at or above R10 million) requires a public participation process¹, while any lease with a term in excess of 10 years must be registered at the Deeds Office² and leases that have a financial impact of the municipality beyond the budget for that year (i.e. lease terms that extend beyond the 3 financial years defined in the municipality's budget) must follow an MFMA Section 33 process.

In addition, lease terms are a determinant of relevant delegations and also used for GRAP reporting on the city's assets. Segmenting leases by term enables the municipality to forecast the future financial revenue for the city as well as conduct age analyses of the lease portfolio. All leases must have definite terms in order to forecast the value of the contract in terms of GRAP asset reporting. An upper limit of 30 years for is therefore be specified.

2. The **value of the leased asset** is also a critical segmenting dimension insofar as it dictates, in conjunction with the term of the lease (see 1 above) whether or not a public participation process is required, as well as what delegations apply (e.g. the City Manager may not delegate the approval of contracts valued above R10 million to any other official³). The asset value assists with the determination of market related rentals and therefore the valuation of the lease portfolio.
3. The **value of the potential lease contract** dictates what processes and delegations are allowed as per the EMM SCMP. For low contract values (<R200, 000), approval of lease contracts may be delegated to listed city officials. For high value contracts however, competitive bidding is required⁴. Single stage bidding is required for high value contracts for which only a low level of technical specification is required, while a two stage process is required for high value contracts requiring a high level of technical specification⁵.
4. **Usage:** The MFMA ATR states that rentals must be market related unless the lease is considered to be in the public interest, and the plight of the poor clause is invoked (i.e. the asset is used to fulfil a social purpose)⁶. This reference to usage in standing legislation does not go far enough in terms of segmenting the lease portfolio. Further dividing non-social use leases into 5 categories facilitates the qualitative analysis of the lease portfolio by usage of asset. The deeper segmentation also allows the city to use lease type as a measure of the city's achievement of social, environmental and economic goals.

7.2. Proposed segmentation

Leases will be classified into the following usage segments:

- Developmental impact leases defined as:
 - Long leases (term in excess of 3 years),
 - Having an estimated value of capital outlay for the development and related operations that represent a significant capital injection to the metro,
 - Containing a design concept that is aligned to the GDS, SDF and other EMM spatial, environmental and/or economic plans , and

¹ MFMA ATR section 34

² Local Government Ordinance 17 of 1939

³ MFMA SCMR section 5.2

⁴ EMM SCMP v3 section 8.3

⁵ EMM SCMP section 25

⁶ MFMA ATR section 13.2

- Leases anticipated to create a number of temporary and/or permanent jobs
- E.g. large factory to be established and run on the leased property
- Telecommunications (predominantly but not limited to cellular masts; does not include the use of the network itself)
- Out of home advertising (predominantly but not limited to billboards, litter bins and street furniture)
- Other commercial use (SMMEs, industrial, agricultural, wayleaves etc.)
- Social use (e.g. church grounds, crèches, NGOs, old age homes, cultural societies)
- Private use (e.g. parking, gardening, security)

The lease portfolio is further segmented by term, asset value and contract value and applicable processes are specified in compliance with the full extent of legislative requirements (see Table 1 Segmental strategies below) and the details of the applicable lease processes are specified in section 8.

The segmental framework not only divides the portfolio into expedient groupings but also prescribes what leases are permitted. For leases that can be categorised by one of the numbered cells, the number indicates what processes apply while blank cells represent categories of leases that will not be permitted. For leases that fall outside out the categories defined below, customised agreements may be drawn up at the discretion of the City Manager.

Table 1 Segmental strategies

		Low value asset (<R10M)			High value asset (≥R10M)		
		ST (<3yrs)	LT (3-10 yrs)	LT (>10yr)	ST (<3yrs)	LT (3-10 yrs)	LT (>10yr)
High contract valve (≥ R200K), high level of technical specification	Dev. impact		1	4		7	10
	Telecom.		1			7	
	OOH advert	1	1		1	7	
	Other. comm.	1	1		1	7	
	Social use	1	1		1	7	
	Private use						
High contract valve (≥ R200K), low level of technical specification	Dev. impact		2	5		8	11
	Telecom.		2			8	
	OOH advert	2	2		2	8	
	Other. comm.	2	2		2	8	
	Social use	2	2		2	8	
	Private use		2				
Low contract valve (< R200K)	Dev. impact		3	6		9	12
	Telecom.		3			9	
	OOH advert	3	3		3	9	
	Other. comm.	3	3		3	9	
	Social use	3	3		3	9	
	Private use		3				

Key	Process/es required
1	2 stage competitive bidding
2	Single stage competitive bidding
3	Public notice (Local Govt Ord 17 of 1939)
4	2 stage competitive bidding Deeds office registry
5	Single stage competitive bidding Deeds office registry
6	Section 33 Deeds office registry
7	2 stage competitive bidding Public participation process
8	Single stage competitive bidding Public participation process
9	Public participation process
10	2 stage competitive bidding Public participation process Deeds office registry
11	Single stage competitive bidding Public participation process Deeds office registry
12	Public participation process Deeds office registry

Note: For applications with a low contract value (< R200K) no bidding process is required however, should multiple bids be received for the same site then in addition to compliance with the other applicable processes prescribed by the segmental framework, criteria for evaluating those bids must be established by a bid specification committee.

8. Framework for lease processing

8.1. Elements of a lease

All the essential requirements listed below must exist simultaneously to constitute a valid lease of an EMM owned immovable asset

- 1) The correct legal description of the subject immovable property and its locality
- 2) Applicable rental which must be market related unless the lease is in the public interest or the plight of the poor demands otherwise.

The Local Government Municipal Property Rates Act of 2004 permits exemptions, rebates or reductions in basic service tariffs for indigent owners, owners temporarily without income and owners dependent on pensions or social grants for their livelihood⁷. These are the basic criteria for invoking the plight of the poor however, the decision to ease the rental rests with Council (unless otherwise delegated) and is also determined taking into account the following factors⁸:

- a) The business plan (organisation) or financial circumstances of the applicant (individual)
- b) The sustainability of the applicant's ability to pay for municipal services used (to be determined through full disclosure of the applicant's financial information)
- c) Whether or not a similar organization (proposed activity) is already in existence in the area
- d) Whether or not the organization (proposed activity) services or benefits residents of the ward in which the site applied for is situated
- e) Any other social and compatible upliftment activities to be undertaken than the main activity applied for
- f) Any other factors Council may, in its discretion, deem appropriate

Note:

- 3) The duration of the lease
- 4) Annual rental escalation percentage which must be agreed upon and noted in the lease agreement and must be in line with market related rental escalations

8.2. Generic detailed lease process

A lease application goes through the following stages from receipt to conclusion:

- 1) Application and supporting documents received
- 2) Lease site identified by city planning and erf identified by GIS
- 3) Conduct site inspection in the presence of the applicant to establish condition of premises
- 4) Credit check conducted to verify applicant's ability to fulfil rental commitments
- 5) Valuation requested from an EMM-appointed sworn appraiser
- 6) Draft contract forwarded to applicant and applicant's changes are considered
- 7) Item drafted and circulated same for comment from departments and affected ward councillors, CCAs and any other relevant government departments

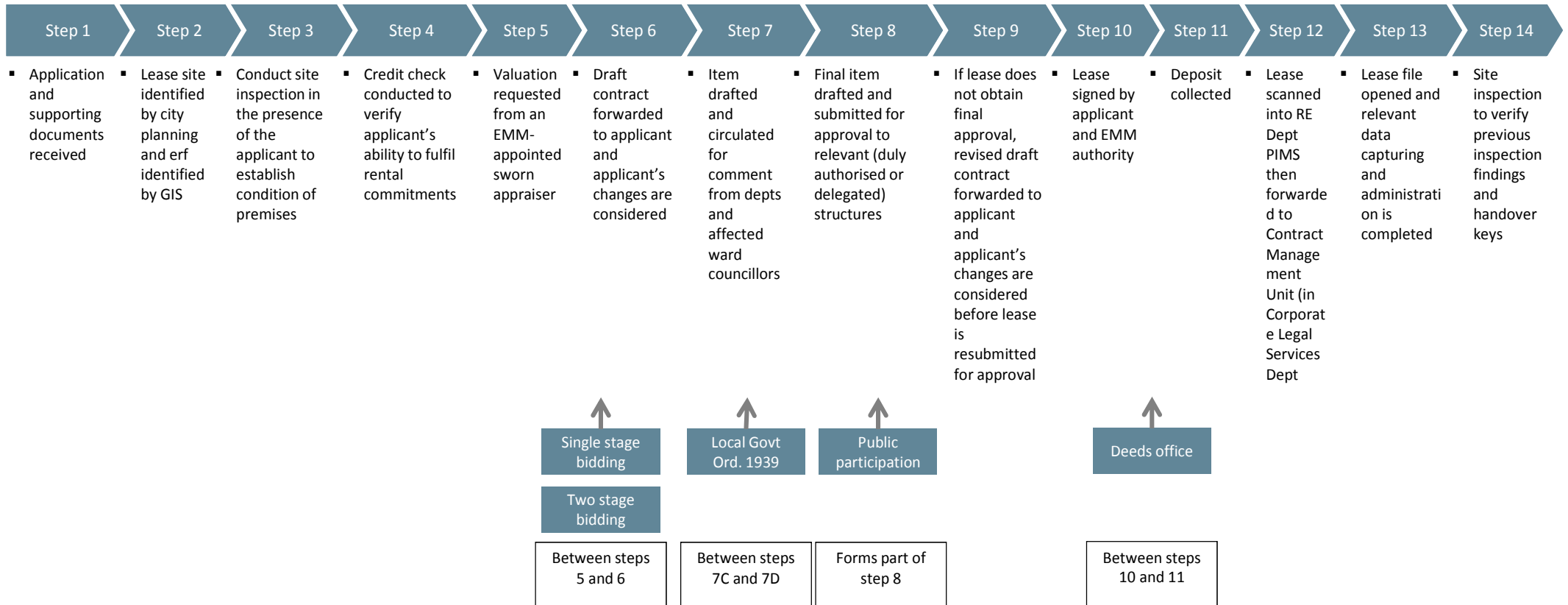
⁷ Local Government Municipal Property Rates Act of 2004, section 15.2

⁸ MFMA- ATR Section 13.2

- 8) Final item drafted and submitted for approval through the relevant structures. The new systems of delegations (2012/ 13) will determine a shorter path for items to be circulated for approval however, as at end October 2012 the relevant structures are as follows:
 - a) Secretariat
 - b) Development Facilitation Committee
 - c) Technical clusters
 - d) City Manager’s Agenda Working Group
 - e) Mayoral cluster
 - f) Mayoral committee

Note: Advertisement of proposed lease must be conducted between (7c) and (7d) above to comply with provisions of section 79.18 of the Local Government Ordinance 17 of 1939
- 9) If lease does not obtain final approval, revised draft contract forwarded to applicant and applicant’s changes are considered before lease is resubmitted for approval
- 10) Lease signed by applicant and EMM authority
- 11) Lease scanned into RE Department PIMS then forwarded to Contract Management Unit (in Corporate Legal Services Department)
- 12) Deposit collected
- 13) Lease file opened and relevant data capturing and administration is completed
- 14) Site inspection to verify previous inspection findings and handover keys

This process will be augmented to include the required processes for different lease sub-segments as shown below:



8.3. Specific lease processes

The full application process (see section 8.2 for details) culminates in the signing of the lease between the applicant and EMM. There are six distinct high level procedures that apply under different circumstances:

- Local Government Ordinance 17 of 1939 (Public notice)

This requirement applies to all leases except those for which Section 33 of the MFMA or the Public participation process is required. Section 79.18 of the Local Government Ordinance 7 of 1939 states that Council must issue a notice of the proposed lease which must be:

(bi) Affixed to the public notice board of the Council; and

(bii) Published in a newspaper in accordance with section 91 of the Republic of South Africa Constitution Act, 1983

[And to] which any person who wishes to object, is called upon to lodge his objection in writing with the Town clerk within a stated period of not less than fourteen days from the date of the publication of the notice in the newspaper.⁹

Council may, owing to both the nature of these kinds of properties and value attached to lease them, consider delegating approval of these leases to the accounting officer and other relevant city officials as per recommended delegations in section 8.4 below.

- Deeds office registration

As per the Local Government Ordinance 17 of 1939, agreements for leases with terms of 10 years or more must be registered against the title deed of the property at the Deeds Office.

- Single stage competitive bidding

Competitive bidding is used to evaluate multiple applications to lease a particular real estate asset. This process is required by the EMM SCMP for contracts valued above R200,000. The process comprises of the following steps and detailed guidelines for each of these are provided in sections 15-20 of the EMM SCMP (v3):

- Compilation of bidding documentation
- Public invitation of bids
- Site meetings or briefing sessions, if applicable
- Handling of bids submitted in response to public invitation
- Evaluation and rejection of bids
- Award of contracts
- Administration of contracts
- Records management

The roles and responsibilities of bid committees and associated officials (typically responsible for the evaluation) are outlined in sections 7.9- 7.12. Since the Development

⁹ Local Government Ordinance 17 of 1939, section 79

Facilitation Committee can fulfil the role of a bid specification committee (BSC) for leases, a real estate specific bid evaluation committee (BEC) and bid adjudication committee (BAC) must be established to handle lease contract bids.

Note: The city reserves the right to invite competitive bids for any lease; this includes leases that originate from unsolicited bids that may contain a unique concept

- Two stage competitive bidding
Process and guidelines are established in the EMM SCMP as per single phase bidding however, the first stage is used to establish inter alia, capacity and acceptability while the second stage is generally used to evaluate the financial value of the bids. According to the MFMA SCM Regulations, section 25:

Two stage bidding may be allowed for:

- large complex projects
- projects where it may be undesirable to prepare complete detailed technical specification
- long term projects with a duration period exceeding three years, and

In the first stage, technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments, while in the second stage final technical proposals and priced bids are invited. This process is required for high value contracts that require a high level of technical specification however, a single stage process can be followed for these contracts at the discretion of the City Manager.

- Public participation requirement
For a long term lease of a high value (>R10 million) asset, Council must authorise the City Manager to conduct a public participation process. This process (described in section 35 of the MFMA ATR) is the same as the MFMA Section 33 process for contracts having a budgetary impact beyond the city's 3 year budget except that the required details for the information statement are also stipulated (in section 34.3b).

Section 35: Public participation process for granting long term rights to municipal capital assets with value in excess of R10 million

If the 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 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 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.*

Section 34.3:

a) Only the municipal council may authorise the public participation process referred to in subregulation (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

8.4. Additional requirements and considerations

8.4.1. Subletting

The lessee shall not be entitled to sub-let the premise or any part thereof nor assign, cede or transfer its interest under the lease agreement nor part with possession of the premises to any other party or body without the written consent of the city having been first obtained, which consent shall not be unreasonably withheld.

In the event of the city consenting to the sub-letting of the premise or a portion thereof, through approval granted by the HOD of the Real Estate Department, the lessee shall in no way be relieved of its obligations to the city under the main lease agreement by reason of any sub-lease.

8.4.2. Maintenance

The lessee accepts the premises “as is” and is responsible for the upkeep and maintenance of the leased premises at his/ her own cost and EMM may issue written notice calling on the lessee to carry out such remedy.

8.4.3. Determination of market related rentals

An independent valuer, appointed by Council (or its delegated authority) is to be contracted to provide an objective estimation of the rental valuation. The applicant is responsible for the payment of the valuation fees at the point of valuation (i.e. not after lease approval).

8.4.4. Provision to waive rental in lieu of maintenance/ upgrading

In cases where the asset to be leased is in poor condition or in need of urgent upgrading, a lessee may apply to have a portion of rental waived in exchange for effecting such repairs or installations as may be required. In some instances occupation can be delayed until the repair and/or installation is complete i.e. the term of the lease would begin after the repairs are completed. In other instances, a portion of rental could be discounted for an agreed number of months. An inspection at the end of the agreed repair period must be conducted to ensure that the lessee has fulfilled his/ her commitments in terms of this arrangement, failing which, he/she becomes liable for the full rental amount i.e. the waiver is invalidated. Such waiver may only be authorised by the HOD of the Real Estate Department.

8.4.5. Authority to decline applications

The HOD of the Real Estate Department is duly authorised to decline lease applications that do not fulfil requirements laid out in this policy and in the associated document outlining the procedures for lease processing.

9. Lease management considerations

9.1. Site inspections

As per the EMM SCMP, long term contracts must be formally reviewed once every three years. Assets leased for terms exceeding 3 years must be inspected as part of this review to ensure compliance with the terms and conditions of the lease agreement. Over and above this, EMM reserves the right to gain access to and inspect the premises at any point in during the term of the lease.

9.2. Records management

The original of the signed copy of the lease agreement shall be scanned into the PIMS at the Real Estate Department before being sent to the Contract Management Unit for filing and permanent storage.

9.3. Payment and evictions

Payment of rental fees shall be in accordance with the signed agreement and in the event of non-payment, appropriate measures shall be taken. Action taken by EMM ranges from letters of demand to notice to vacate. Should the tenant refuse or fail to vacate, or lodge a dispute or a notice to object, an application to evict may be lodged.

9.4. Lease expiry and reapplications

Legislation implies that once a lease expires, the tenant must reapply to contract with the municipality as if no prior contract existed as, affording preference to the previous tenant can be construed as a bias that undermines the principles of fair treatment as described in section 4 of the EMM SCMP. The most effective way to legally facilitate renewals (to secure future revenue for the city from existing tenants) is to invite existing tenants to apply for a new lease before the current lease has expired. While approval of the new lease is not guaranteed, if the application is successful the tenant will be spared the burden of vacating the premises while other applications are being considered.

10. Short title and effective date

This document shall be called the “LEASING POLICY FOR MUNICIPALLY OWNED IMMOVABLE PROPERTY” and will take effect from the date of its approval by Council.

**EKURHULENI METROPOLITAN
MUNICIPALITY**

**LEASING STRATEGY FOR MUNICIPALLY
OWNED IMMOVABLE PROPERTY**

(14 November 2012)



Ekurhuleni
METROPOLITAN MUNICIPALITY

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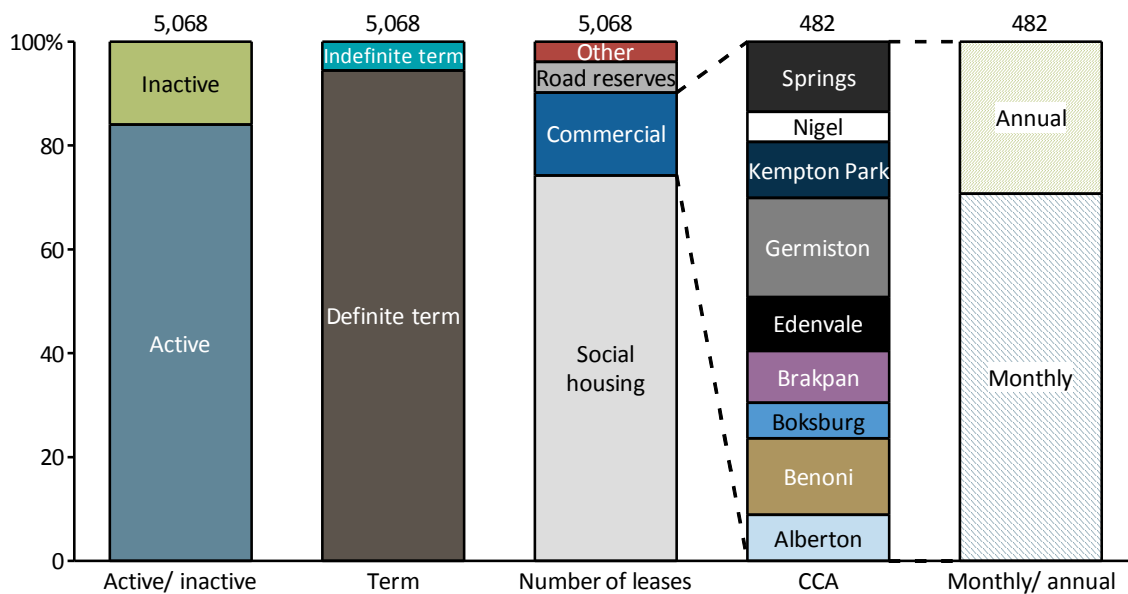
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1 Executive summary

This document is intended to provide a comprehensive strategy¹⁰ to guide leasing in EMM. An overview of the current lease portfolio provides motivation for the strategy, which in turn informs the high level principles that guide the strategy. Segmentation of the leasing portfolio provides clarity and focus to enable the achievement of strategic objectives of distinct lease types, enables process standardisation as well as maximises profitability, and is therefore a critical element of the overall strategy. Legislative implications and the previously proposed segmentation are outlined to contextualise and support the proposed segmentation. Segmental strategies to unlock value in each of the segments are then developed. Key processes applicable to each segment are outlined to provide the clarity required to optimise efficiencies. The leasing strategy is designed in compliance with all applicable legislation listed in the final section.

2 Lease portfolio overview

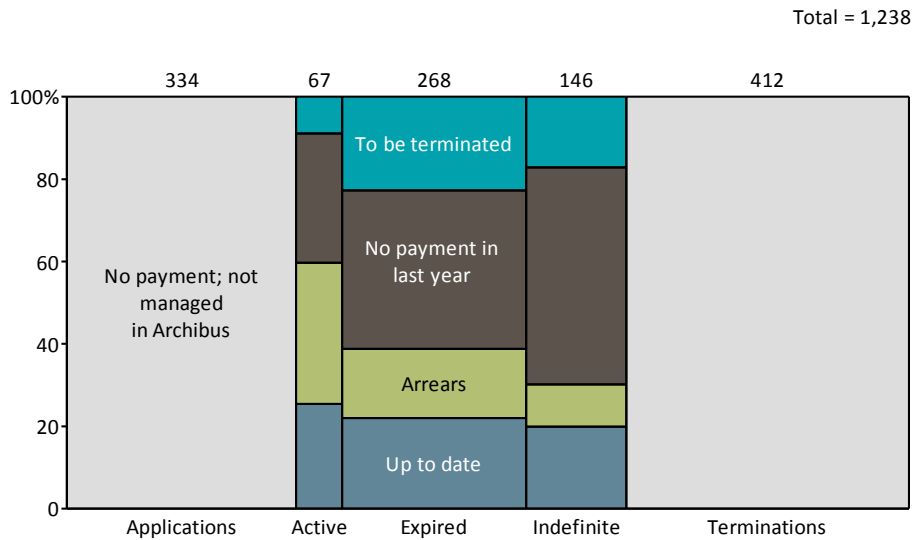
Figure 1: Total lease portfolio



Social housing leases make up 74% of the current portfolio which accounts at least partially for the high levels of definite term and active leases. Commercial leases are spread fairly evenly across the 9 CCAs and 71% of these leases are billed monthly.

¹⁰ Excluding social housing leases

Figure 2: Commercial lease portfolio and applications



A more detailed analysis of the commercial lease portfolio reveals that in addition to a significant processing backlog, a large majority of payments remain outstanding. A lack of defined strategies and processes has exacerbated this situation.

3 Strategic context

3.1 Alignment to Real Estate strategy and portfolio strategy

The Real Estate Department’s mission is to facilitate, through Ekurhuleni’s real estate portfolio, the sustainable generation of social, environmental and economic returns for the city’s residents. The leasing strategy is intended to support the department’s mission by defining the strategy required to maximise the benefit of each portfolio segment, and clarifying the associated processes. The overall leasing strategy is intended to optimise efficiencies to secure the highest possible gains for the municipality as well as improve and expand the city’s lease portfolio.

Since the Real Estate Department’s mandate includes the provision of all property-related services, all leases will be processed within the property management division of the department. EMM owned assets may be leased to create some benefit to the city be this financial (all leases must be at market related rates unless public interest or ‘the plight of the poor’ is invoked), social, environmental or development gains. Note that leasing of assets does not include short term bookings of venues or properties (e.g. SRAC venue bookings).

In light of Real Estate’s interlinked unit and portfolio strategies, ongoing analysis of the lease portfolio (and subsequent development and refinement of segmental strategies) will contribute towards the department’s strategic evolution. Lease segmental strategies will govern a subset of the overall asset portfolio thereby contributing towards the overall asset portfolio strategy. The processing of leases is an essential function of the Real Estate Department, therefore the policies,

structures and strategies designed to apply to lease processing will ultimately influence the design of the Real Estate Department itself.

The overall portfolio strategy segments the city's real estate portfolio into the following asset classes:

Infrastructural service delivery	<ul style="list-style-type: none"> ▪ Land used for the delivery of basic services ▪ Roads, water and energy
Residential service delivery	<ul style="list-style-type: none"> ▪ Land used in the provision of housing
Other direct service delivery	<ul style="list-style-type: none"> ▪ Land used the provision of direct services beyond basic services ▪ SRAC, ERM, clinics etc.
Other indirect service delivery	<ul style="list-style-type: none"> ▪ Land used to provide indirect services ▪ Depots, fire stations etc.
Municipal office and staff accommodation	<ul style="list-style-type: none"> ▪ Land used for provision of office and residential accommodation to municipal staff and departments
Specialist strategic	<ul style="list-style-type: none"> ▪ Strategic sites which provide a specialist service or require specialist skills ▪ Springs Market, waste-to-energy sites etc.
General strategic	<ul style="list-style-type: none"> ▪ All non-specialist strategic sites ▪ Large commercial sites etc.
Other land with strategic potential	<ul style="list-style-type: none"> ▪ Industrial, agricultural or commercial land with a strategic value
Vacant and other land	<ul style="list-style-type: none"> ▪ Vacant land or land where the current use is unknown

The leasing strategy will form part of the overall strategy by guiding lease portfolio management across asset classes, there by influencing the overall segmental strategy for each asset class.

3.2 High level principles

The leasing strategy will:

- Facilitate equitable access to the city's immovable assets by applying the contents of section 217 of the Constitution of South Africa (which states that government procurement must be in accordance with a system which is fair, equitable, transparent, competitive and cost-effective)
- Enable lease transactions and leases to be processed in a legislatively compliant yet efficient manner
- Secure future financial gains for the city

- Support the city’s social and environmental agendas by making provision for residents pursuing social and environmental activities to be granted access to real estate assets e.g. management of SRAC leases
- Support the city’s economic development imperatives by:
 - Facilitating the expedited processing of leases with developmental impact
 - Aligning development with the strategic plans of the city
- Assist with the upkeep of properties in the portfolio insofar as maintenance requirements may be stipulated in rental agreements

4 Segmentation

4.1 Rationale for segmentation

The lease portfolio is comprised of many lease types. Some leases are intended for financial gain while others are intended to fulfil social and/or economic requirements. Segmentation aims to group leases into categories that facilitate the optimisation of revenue and social benefits from the lease portfolio.

Firstly, segmentation provides clarity and focus to enable the achievement of strategic objectives of distinct lease types. Segmental strategies will account for and aim to leverage the diverse opportunities provided by different types of leases.

Secondly, effective segmentation enables process standardisation to achieve optimal efficiencies. At a high level, the processes are similar across segments however, lower level processes differ depending on the origin of the application or bid, the competitiveness required to gain the maximum benefit to the city from the lease, the value of the asset, the value of the potential lease contract and the level of public participation required by legislation.

Finally, strategic segmentation maximises the profitability of the lease portfolio by exploiting the unique economics of each segment. Each segment will have a unique profitability analysis that influences and is influenced by the relevant segmental strategy. The co-ordination and application of the segmental strategies forms the basis for the overall lease strategy.

4.2 Segmentation criteria

Legislation implies four important segmenting dimensions, some of which have been further divided to generate additional benefits for the city.

5. The **term of a lease** directly affects what processes have to be followed from both national and municipal legislative perspectives. According to the MFMA ATR, a long lease is defined as a lease with a term equal to or greater than 3 years. A long lease of a high value asset (asset valued at or above R10 million) requires a public participation process¹¹, while any lease with a term in excess of 10 years must be registered at the Deeds Office¹² and leases that have a financial impact of the municipality beyond the budget for that year (i.e. lease

¹¹ MFMA ATR section 34

¹² Local Government Ordinance 17 of 1939

terms that extend beyond the 3 financial years defined in the municipality's budget) must follow an MFMA Section 33 process.

In addition, lease terms are a determinant of relevant delegations and also used for GRAP reporting on the city's assets. Segmenting leases by term enables the municipality to forecast the future financial revenue for the city as well as conduct age analyses of the lease portfolio. All leases must have definite terms in order to forecast the value of the contract in terms of GRAP asset reporting. An upper limit of 30 years for is therefore be specified.

6. The **value of the leased asset** is also a critical segmenting dimension insofar as it dictates, in conjunction with the term of the lease (see 1 above) whether or not a public participation process is required, as well as what delegations apply (e.g. the City Manager may not delegate the approval of contracts valued above R10 million to any other official¹³). The asset value assists with the determination of market related rentals and therefore the valuation of the lease portfolio.
7. The **value of the potential lease contract** dictates what processes and delegations are allowed as per the EMM SCMP. For low contract values (<R200, 000), approval of lease contracts may be delegated to listed city officials. For high value contracts however, competitive bidding is required¹⁴. Single stage bidding is required for high value contracts for which only a low level of technical specification is required, while a two stage process is required for high value contracts requiring a high level of technical specification¹⁵.
8. **Usage:** The MFMA ATR states that rentals must be market related unless the lease is considered to be in the public interest, and the plight of the poor clause is invoked (i.e. the asset is used to fulfil a social purpose)¹⁶. This reference to usage in standing legislation does not go far enough in terms of segmenting the lease portfolio. Further dividing non-social use leases into 5 categories facilitates the qualitative analysis of the lease portfolio by usage of asset. The deeper segmentation also allows the city to use lease type as a measure of the city's achievement of social, environmental and economic goals.

4.3 Previously proposed segmentation

4.3.1 Previously envisioned segmentation

The draft lease policy developed by the Corporate Legal Services Department¹⁷ distinguishes between the following lease categories:

- **Viable properties** shall mean properties that EMM can lease to leverage economic returns whilst retaining ownership of such properties and which properties must be let through a competitive bidding process unless as otherwise provided for in this policy

¹³ MFMA SCMR section 5.2

¹⁴ EMM SCMP v3 section 8.3

¹⁵ EMM SCMP section 25

¹⁶ MFMA ATR section 13.2

¹⁷ "Policy on the Lease of Municipal Immovable Assets" developed in 2011/ 12

- **Non-viable properties** shall mean properties adjacent to residential properties, businesses or factories that are incapable of being developed on their own (due to urban planning or shape) but can meaningfully be used if let to the adjacent property for parking, gardening purposes etc.

Discussions with the Properties and Estates team within the Corporate Legal Services Department led to a refinement of the above distinctions by taking the value of the asset and the term of the lease into account:

Assets valued at or less than R10 million are subdivided into viable and non-viable categories (for both short and long term leases)

- 1) **Viable properties** shall mean properties that EMM can lease to leverage economic returns whilst retaining ownership of such properties. Viable properties are split into strategic and non-strategic subcategories:
 - a) **Strategic viable assets** shall mean properties on which more than a single dwelling unit or more than single factory or a business complex can be developed in terms of the Spatial Development Framework or a Town Planning Scheme and will include:
 - (i) Residential and business erf on which multiple residential and/or business units will be allowed in terms of the Spatial Development Framework and/or Town Planning Scheme
 - (ii) Property outside approved townships such as farm land and agricultural holdings
 - (iii) Such other properties that the council may in its sole discretion determine
 - b) **Non-strategic viable assets** shall mean properties that constitute individual erven in an approved township that was specifically created for use by or sale to the public, and on which only a single dwelling unit or a single factory/business will be allowed in terms of the Spatial Development Framework or Town Planning Scheme. This includes:
 - i) Residential, church, crèche and institutional erven and
 - ii) To the extent deemed appropriate by the Council, industrial, business and commercial erven
- 2) **Non-viable properties** shall mean portions of sanitary lanes and road reserves as well as offcuts and awkwardly shaped portions of land

Assets valued above R10 million

Short term leases on assets valued above R10 million will follow the processes described for leases with developmental impact (i.e. competitive bidding processes as outlined in the Land Disposal Framework).

For long term (>3 year) leases on assets valued above R10 million, the public participation process must be followed after which the matter must be referred to Council for approval. The procedure for the public participation process is described in detail in section 34- 35 of the MFMA ATR.

4.3.2 Limitations of existing segmentation

Although the outcomes of the discussions regarding the draft policy are documented in the previous section, the latest thinking in terms of this policy was not formalised and therefore does not appear in any EMM document (draft or otherwise).

The segmentation was based on the potential use of properties thus segmenting properties instead of leases. Thus any analysis conducted using this segmentation would refer to all EMM owned properties instead of referring to all leases of EMM owned assets.

In addition, having such high level segments meant that multiple processes were applicable within each segment. For example, the non-viable segment includes both a short term social use as well as a long term outdoor advertising site however; these leases on these properties ought to be treated very differently to one another. From a legislative perspective, out of hand/ private treaty settlement may apply to the social lease while an unsolicited bid process may apply to the outdoor advertising lease. From a strategic perspective, the process for the short term social lease should be as short as possible to enable the applicant to pursue the proposed social activity, while the city may elect to request competitive bids for the outdoor advertising site (to maximise revenue).

The previous draft policy also carried a significant risk of misinterpretation regarding applicable processes as no clear association between lease segments and processes was established.

4.4 Proposed segmentation

Segmentation of the lease portfolio is intended to provide the basic distinctions along which specific lease processes will be developed. In addition, effective segmentation forms the basis for the development and refinement of segmental strategies that will form part of the overall asset portfolio strategy and in turn influence the design of the Real Estate Department itself.

Different segments of the lease portfolio can be used to support and/or achieve specific strategic objectives of the city. By accommodating developmental impact leases for example, EMM is able to drive development without permanently alienating real estate assets. Moreover, EMM stands to receive further financial gain in cases where the land and improvements revert to EMM ownership upon expiry of the lease. By specifying that leases with terms in excess of 10 years must be developmental impact leases, the city is guaranteed that very long term rights are granted in exchange for financial as well as economic (and/or social) gain.

Using the above example, the segmental strategy for development impact leases will form part of the asset portfolio strategy for specialist and general strategic assets. Lease processes for these assets must be aligned with other processes (managing, disposing etc.)

Leases will be classified into the following 6 usage segments:

- Developmental impact leases defined as:
 - Long leases (term in excess of 3 years),
 - Having an estimated value of capital outlay for the development and related operations that represent a significant capital injection to the metro,
 - Containing a design concept that is aligned with the existing SDF and other EMM spatial, environmental and/or economic plans , and
 - Leases anticipated to create a number of temporary and/or permanent jobs
 - E.g. large factory to be established and run on the leased property

- Telecommunications (predominantly but not limited to cellular masts; does not include the use of the network itself)
- Out of home advertising (predominantly but not limited to billboards, litter bins and street furniture)
- Other commercial use (SMMEs, industrial, agricultural etc.)
- Social use (e.g. church grounds, crèches, NGOs, old age homes, cultural societies)¹⁸
- Private use (e.g. parking, gardening, security)

The lease portfolio is further segmented by term, asset value and contract value and applicable processes are specified in compliance with the full extent of legislative requirements (see **Table 2: Segmental framework**). Note that the table below originates in the EMM Lease Policy for Municipally Owned Immovable Property and any changes to the table as it appears in the policy must be applied to this document. In addition, the policy contains details of each of the applicable lease processes.

The segmental framework not only divides the portfolio into expedient groupings but also prescribes what leases are permitted. For leases that can be categorised by one of the numbered cells, the number indicates what processes apply while blank cells represent categories of leases that will not be permitted. For leases that fall outside out the categories defined below, customised agreements may be drawn up at the discretion of the City Manager.

Table 2: Segmental framework

		Low value asset (<R10M)			High value asset (≥R10M)		
		ST (<3yrs)	LT (3-10 yrs)	LT (>10yr)	ST (<3yrs)	LT (3-10 yrs)	LT (>10yr)
High contract value (≥ R200K), high level of technical specification	Dev. impact		1	4		7	10
	Telecom.		1			7	
	OOH advert	1	1		1	7	
	Other. comm.	1	1		1	7	
	Social use	1	1		1	7	
	Private use						
Low contract value	Dev. impact		2	5		8	11

¹⁸ Lessees of social leases will include a certain categories of ‘owners’ as described in the EMM Property Rates Policy 2012, section 7.1: Indigent owners, child headed households, pensioners, disability grantees/medically boarded persons, sporting bodies, public benefit organizations/NGO’s and cultural organisations, religious organisations, public & private schools, universities & colleges, owners of property situated within an area affected by any other serious adverse social or economic conditions

	Telecom.		2			8	
	OOH advert	2	2		2	8	
	Other. comm.	2	2		2	8	
	Social use	2	2		2	8	
	Private use		2				
Low contract value (< R200K)	Dev. impact		3	6		9	12
	Telecom.		3			9	
	OOH advert	3	3		3	9	
	Other. comm.	3	3		3	9	
	Social use	3	3		3	9	
	Private use		3				

Key	Process/es required
1	2 stage competitive bidding
2	Single stage competitive bidding
3	Public notice (Local Govt Ord 17 of 1939)
4	2 stage competitive bidding Deeds office registry
5	Single stage competitive bidding Deeds office registry
6	Section 33 Deeds office registry
7	2 stage competitive bidding Public participation process
8	Single stage competitive bidding Public participation process
9	Public participation process
10	2 stage competitive bidding Public participation process Deeds office registry
11	Single stage competitive bidding Public participation process Deeds office registry
12	Public participation process Deeds office registry

5 Segmental strategies

Once segments have been established, dedicated strategies can then be developed for different segments. The current strategies are based on usage segmentation however; strategies could become more granular in future as more detailed strategies for smaller segments are developed.

- Developmental impact leases

An increase in the uptake of EMM developmental impact leases should be targeted. This can be accomplished by identifying key real estate assets (with development potential) and advertising these to invite competitive bids. The city must take a proactive stance towards ensuring that

these developments are undertaken and that the most suitable applicants are selected in each case.

Processes must be streamlined to improve the city's image as a developer. This includes the removal of obstructive processes and the simplification of the existing application and administration processes while maintaining compliance with the legislative framework.

Finally, the city should consider the introduction of enabling policies to promote development and expand this segment of the lease portfolio. Incentives such as rebates on rates and bulk services after a certain level of development has been achieved or after a set number of years provided that the applicant fulfils a predetermined set of objectives could foster widespread interest in developmental leases in EMM.

- Telecommunications leases

In order to optimise rentals for the telecommunications segment both expired and active leases must be renewed and re-priced. Leases prices will need to be benchmarked in order to effectively negotiate to re-price all contracts at commercial rates. Multi-site leases (each contract will refer to a set of sites to be leased) with agreed rentals and annual escalations must be concluded to secure future revenue for the city.

The facilitation of new cell mast leases requires improvement of procedures, the proactive identification of potential cell mast sites and expediting the approval of site rezoning, building plans, etc.

Ways to facilitate other telecoms infrastructure lease applications include the creation of competitive bidding processes for leases that accommodate these specialist lease types, allowing new sites to be added to existing lease contracts and the establishment of appropriate processes to assist with the implementation of this strategy.

- Out of home advertising leases

The restructuring of outdoor advertising into two functions with distinct mandates (policy / licensing / enforcement and revenue generation) is essential to optimise efficiency in this portfolio segment. By clarifying the roles of the enforcers of the rules versus those responsible for maximising revenue, clear processes can and should be established to support each of these functions and the interaction between them.

The complete leasing strategy for out of home advertising leases (that covers operational and strategic full potential as well as the redefinition of the OOH media opportunity) is outlined in the EMM Out of Home Media Strategy and the EMM Out of Home Media Advertising Signs Pricing Policy documents.

- General commercial use leases

This segment should be used to foster economic development as per the city's strategic plans. As such, potential lease sites in the CBD and other focal areas should be marketed in local communities e.g. via print media and public notices. The city could also introduce incentive schemes (e.g. rebates on basic services) to foster greater interest in leasing EMM owned land for commercial purposes.

The simplification of existing and development of new processes can be used to expand this lease portfolio segment by improving efficiency and enhancing the city's reputation from an 'ease of doing business' perspective.

While securing market related rentals is a legislative requirement, many existing (though expired) leases are currently generating rental income below market related rates. A drive to renew expired commercial leases (many of which are currently operating on a month-to-month basis) and obtain market related rentals, will not only fulfil a legislative compliance objective but will also grow revenue associated with this segment of leases. There are a number of active leases which the city may elect to renegotiate with a view to adjusting rentals to market related rates.

- Social use leases

The improvement of lease processes and provision of additional capacity (e.g. to provide assistance to applicants) are the two key methods for optimising the social leases segment. Shortened turnaround times eliminate the delay of social services provided by lease applicants.

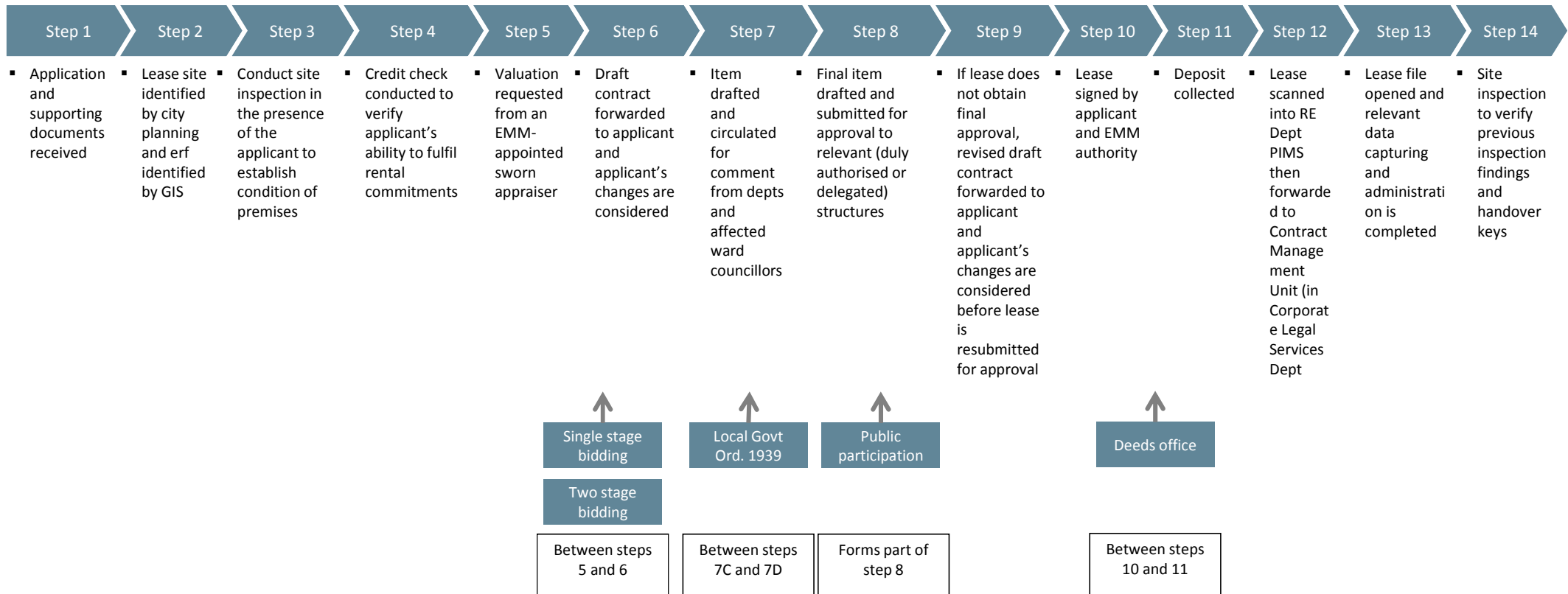
A reduction in turnaround times will maximise the social benefit to EMM residents by obviating the need for extensive processes that delay the delivery of social services being provided by the applicant.

Although legislation does permit an easing of rental for leases that are considered to be in the public interest, it is important that the specific conditions for public interest and/or "plight of the poor" (as outlined in the EMM Lease Policy for Municipally Owned Immovable Property) are met before rentals below market related rates are approved.

- Private use leases

Leases for private use should be regarded as a service provided by the municipality rather than a potentially profitable lease portfolio segment. While these leases are accommodated by the EMM Lease Policy for Municipally Owned Immovable Property, a minimum term of 3 years is imposed to prevent a situation wherein the city's resources are wasted on the high frequency of renewals.

6 Process overview



7 Legislative and regulatory framework

- Constitution of RSA, 1996
- EMM Supply Chain Management Policy, v3 2012 (EMM SCMP)
- Local Government: Municipal Finance Management Act, 2003 (MFMA)
- Municipal Assets Transfer Regulations, 2008 (MFMA ATR)
- Municipal Supply Chain Management Regulations, 2005 (MFMA SCMR)
- Local Government: Municipal Systems Act, 2000
- Local Government: Municipal Structures Act, 1998
- Local Government Ordinance 17 of 1939

While all the above listed legislation is relevant in terms of providing a framework within which the leasing strategy must be developed, the MFMA (including the MFMA ATR and MFMA SCMR) and the EMM SCMP are the most important documents.

Direct application of the MFMA occurs through the section 33 process, which has been integrated into the leasing policy. The conditions under which this process is required as well as a detailed description of the process are stipulated in the MFMA under the relevant section.

The MFMA ATR prescribes the conditions under which the public participation process is required as well as a description of the process itself. In addition, the MFMA ATR lists the minimum criteria for easing market related rentals on the basis that the lease is in the public interest or the plight of the poor is invoked.

The MFMA SCMR forms the basis for delegations that are required for the implementation of the EMM Lease Policy for Municipally Owned Immovable Property, which in turn guides the leasing strategy.

The EMM SCMP prescribes processes for evaluating bids and approving contract (e.g. single/ two stage tenders) depending on the value of the potential contract value. The EMM SCMP is an essential annexure to the EMM Lease Policy for Municipally Owned Immovable Property as it provides detailed guidelines for the various bidding processes.