

# **MAKANA MUNICIPALITY COMMONAGE POLICY**

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## **1. DEFINITIONS**

1.1 In this Policy, unless the context indicates otherwise;

1.1.1 "Agriculture" means the Department of Agriculture, Forestry and Fisheries including its successor in title;

1.1.2 "Commonage Committee" means the Commonage Committee established to deal with all issues relating to commonage on a municipal level;

1.1.3 "Constitution": means the Constitution of the Republic of South Africa, 1996 (as amended);

1.1.4 "Council": means the municipal council of the Municipality referred to in section 157 of the Constitution;

1.1.5 "day/s": means calendar days unless the context indicates otherwise;

1.1.6 "Delegated authority": means any person or committee delegated with authority by the Municipality in terms of the provisions of the MFMA and/or other relevant legislation;

1.1.7 "Environmental Affairs" means the Department of Environmental Affairs including its successor in title;

1.1.8 "Granting of rights": means the granting by the Municipality of the right to use, control or manage capital assets in circumstances where sections 14 and 90 of the MFMA and Chapters 2 and 3 of the Municipal Asset Transfer Regulations do not apply. In other words, where the granting of such rights does not amount to "transfer" or

"disposal" of the asset and which includes leasing, letting, hiring out, etc., of a capital asset;

1.1.9 "IDP" means the adopted integrated development plan of the Municipality envisaged in section 25 of the Systems Act;

1.1.10 "lease agreement": means the agreement which is concluded between the Municipality and land user;

1.1.11 "lessee" means a person with whom a lease agreement has been concluded and who utilizes the commonage for agricultural purposes and "land user" shall have a corresponding meaning;

1.1.12 "Management Committee" means the Commonage Management Committee established for every ward;

1.1.13 "MFMA": means the Local Government: Municipal Finance Management Act, 56 of 2003;

1.1.14 "Municipality": means Makana Municipality, a local municipality established in terms of the Local Government: Municipal Structures Act 117 of 1998, or any person(s) or committee delegated with the authority to act on its behalf;

1.1.15 "Municipal Asset Transfer Regulations": means the Municipal Asset Transfer Regulations published in Government Gazette 31346 of 22 August 2008;

1.1.16 "Municipal Manager": means the "Accounting Officer" as defined in section 1 of the MFMA, or any person/s or committee delegated with the authority to act on its behalf;

1.1.17 "person": includes a natural person or legal entity;

1.1.18 "PLAA" means the Provision of Land and Assistance Act 126 of 1993;

1.1.19 "Policy": means this Supply Chain Management Policy adopted by the Municipality in terms of section 111 of the MFMA, as amended from time to time;

1.1.20 "Rural Development" means the Department of Rural Development and Land Reform including its successor in title;

1.1.21 "small farmer" means a person who utilizes or wish to utilize commonage for agricultural purposes and "emerging farmer" shall have a corresponding meaning;

1.1.22 "Supply Chain Management Policy" means the Supply Chain Management Policy of the Municipality adopted in terms of section 111 of the MFMA;

1.1.23 "Supply Chain Management Regulation/s": means the Municipal Supply Chain Management Regulations published under GN868 in Government Gazette 27636 of 30 May 2005 in terms of the MFMA;

1.1.24 "Systems Act": means the Local Government: Municipal Systems Act, 32 of 2000;

1.1.25 "Training Facilities" means the training facilities which provides training for upcoming emerging farmers;

1.1.26 "Water Affairs" means the Department of Water Affairs including its successor in title;

1.2 Words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include companies, close corporations and firms, unless the context clearly indicates otherwise.

1.3 Unless otherwise indicated, all amounts/limits stated in this document shall be deemed to be inclusive of all applicable taxes.

## **2. INTRODUCTION**

The origin of municipal commonage goes as far back into history as the formal establishment of

Towns. The State granted big portions of land, surrounding towns, to Councils which land, could then be used by town residents, amongst other things, the keeping of cattle to slaughter, the milking of cows and the cultivation of products. In the context of Apartheid, this land was only made available to white people. With the passing of time, residents lost interest in the use of commonage and this land was made increasingly available to commercial farmers. With the influx of people to towns, especially in rural areas, there is increasing pressure on the right to use municipal commonage. This can be attributed to the need of people (amongst others, new residents) to use this source in order to retain their right to existence. The Municipality is confronted with an increasing amount of requests from emerging farmers for the usage of commonage for, amongst other things, grazing for their cattle as well as for the cultivation of agricultural products.

The function of commonage has gained a new character through the new constitutional dispensation. Where it should still, as in the past, be used for the advancement of the residents, the commonage should now be managed within the bigger context of the transformation of the South African community. The Makana Municipality acknowledges that all black people (Colored, African and Indian) were historically excluded from gaining access to land in South Africa and especially because of high land prices. Commonage within the municipal area offers an ideal opportunity for the municipality to address this issue. Even though the Makana Municipality is not directly responsible for agricultural development or land reforms, the municipality still has to support processes as far as is possible within the established legal framework. The Spatial Development Framework will be a key document in designating the use of commonage which can be used to identify specific land parcels for specific uses. This policy together with the applicable statutory provisions, instruments and other related documents including but not limited to the IDP, applicable municipal regulations relating to grazing, impoundment, sowing sites, irrigation and special project regulations, plans and related documents in respect of commonage agreements with land users forms the framework in terms of which the municipality will manage commonage and, if necessary, acquire new commonage.

The Makana Municipality commits itself to, inter alia and within its statutory and legal Framework, use commonage for:

- The empowerment of emerging farmers within the municipal area;
- The alleviation of poverty by making land available to poor residents, especially

Women in the area; and  
- Local economic development and land reforms.

### **3. PURPOSE**

The purpose of the policy is to:

1. Provide for the sustainable use and management of commonage made available for the development of poor communities;
2. Make land available for agricultural development that forms an integral part of the Municipality's IDP and that addresses the needs of emerging farmers;
3. Address the alleviation poverty by making commonage land available to emerging farmers and to foster local economic and youth development;
4. Outline the role, rights and responsibilities of the Municipality as owner of the land, in order to make the existing commonage land available in a fair and equal manner for the development and to the benefit of the community;
5. set out the required steps to be taken should additional land have to be acquired;
6. Outline the role of the land users;
7. Provide for decision-making mechanisms;
8. set forth the framework for administrative and institutional management of commonage  
Land to ensure that the land is sustainable and successfully cultivated.

### **4. PRINCIPLES**

The principles outlined below, will guide the Municipality, the land users and all other interested parties, in realizing the vision and aims of this Policy and with any other relevant legislation and binding principles inform and establish the general framework and basis which this Policy will be interpreted, administered and implemented. The Municipality will:

1. Use its best endeavors in order to further the social and economic development of the  
community and participate in national and provincial development programs and land reform programs;
2. Insofar as possible and in accordance with and in compliance with the relevant statutory  
Framework gives priority to previously disadvantaged residents;
3. Where possible, support and facilitate the development of relevant local decision-making forums such as emerging farmers' associations and ensure that any affected parties are adequately consulted at all times;
4. Within its means use its best endeavors to make sufficient land available as far as possible to meet the needs of the community;
5. Insofar reasonably possible and applicable, ensure the full participation of all interested  
parties, in particular the upcoming emerging farmers;

6. Strive to make sufficient capacity available for the successful implementation of this policy.

All the land users will:

- treat each other with respect and in good faith;
- ensure openness and transparency;
- promote effective communication;
- demand fair liability.

Decision-making and practices will have the sustainable management of commonage as a goal. It is in the interest of future generations that the quality of the natural resource base (soil and water) is preserved or improved. The users of commonage will therefore apply fitting agricultural practices in order to promote sustainability.

## **5. FRAMEWORK FOR THE MANAGEMENT OF COMMONAGE AND ESTABLISHMENT OF COMMITTEESLAND**

The Municipality will establish a central Commonage Committee that will handle commonage issues on a municipal level. The committee will consist of commonage users, representatives of the municipality (amongst others, represented by commonage officers that serve on Commonage Committees), Agriculture, Water Affairs and any other relevant role player.

The Commonage Committee will have the powers to make recommendations to Council. The Commonage Committee will, amongst other things, be responsible for administrative tasks relating to the management of the commonage as well as the consideration of and the making of recommendations of new applications regarding the of commonage, the acquisition of commonage and any other matters that affect the land users. Any communication from the land users to the Municipality will be through the Commonage Committee. Every ward will have its own Management Committee on which one municipal commonage land officer will serve and of which all emerging farmers in the ward will be members. The Management Committee will, amongst other things, be responsible for the management of the commonage that they use protecting the interest of its small farmers and will report to the Commonage Committee.

## **6. IDENTIFICATION OF COMMONAGE LAND**

The Municipality will, as soon as is reasonably possible, after the commencement of this policy, do an audit to research the acquisition of commonage and to establish the conditions of the allocation and limited title deeds. This information will be made known to residents in order to enable them to acquire access and usage. When the need for

access to more commonage is established, the Municipality will, in accordance with the provisions of any other program of Rural Development, apply for assistance to acquire such land. The new commonage will be identified in consultation with the Municipal Commonage Committee and the relevant small farmers will be identified to ensure that the land is suitable.

When the Municipality acquires more commonage, the title deeds of the new commonage will, subject to any requirements of Rural Development and relevant law, provide that the Municipality is required to make the land available to its residents, with the emphasis on the poor and less privileged.

## **7. USE OF COMMONAGE**

The commonage will be used for agricultural purposes that consist of livestock and the planting of crops, eco-tourism and small businesses that can emanate from the aforementioned. The use of the commonage will further be subject to any national and provincial legislation as well as any regulations, policies or bylaws as determined and promulgated by the municipality from time to time with Committee and with input from Agriculture . This will be done with due regard to the spatial development framework, carrying capacity of the land and the establishment of proper management systems and a comprehensive land usage plan of commonage land available for agricultural purposes.

Agriculture will be requested to provide support to the Commonage Committee in the determination of the carrying capacity of land, which is fit for grazing and also to provide support to prospective land users to compile grazing-agreements. The amount of cattle on the commonage will be determined through the carrying capacity of the land and livestock farming will be subject to grazing-regulations as compiled by the Municipality from time to time. The Municipalities will ensure that sufficient administrative and other support is provided to the Commonage Committee to apply and enforce these regulations. All farmers with livestock on the commonage, must, within 60 days, comply with the requirements as determined by the Municipality with regards to the marking of animals, provided that an animal that is not marked according to the prescripts of the Animal Identification Act 6 of 2002 may not graze on the commonage. The allocation of land and camps for grazing will be done in cooperation with Agriculture and the Municipality undertakes to provide the necessary support in this regard. Water rights will be granted to land users by the Municipality (in consultation with the Commonage Committee).

The distribution of water on commonage will be the municipality's responsibility (in consultation with the Commonage Committee) as well as further responsibilities to negotiate with Water Affairs for subsidies and infrastructure etc. Access to land will only be provided if the necessary water supply is available on the land, provided that the Municipality takes reasonable steps to ensure water supply. Livestock farmers who use commonage will be subject to impoundment regulations as determined by the municipality (in consultation with the Commonage Committee). Ordinances and regulations in terms of the custody of animals must be applied strictly, as well

regulations relating to the slaughter of animals, the Animal Identification Act 6 of 2002 and the Meat Safety Act 40 of 2000.

## **8. CRITERIA FOR ACCESS TO THE USAGE OF COMMONAGE**

The Municipality will establish and amend the specific criteria applicable to access to commonage within the relevant statutory framework, from time to time this will be made available to prospective applicants upon request. In addition, but the following general requirements will also apply:

8.1 Individual applicants must be registered members of emerging farmer associations within the municipal areas.

8.2 For group applications, all group members must be part of the historically-disadvantaged population.

8.3 Proposed land users must be permanent residents of the Makana municipal area.

8.4 Individuals of households with an income of less than R5000 per month will enjoy preference.

8.5 The applicant must dispose to an affidavit that the applicant has been resident in the Makana Municipal area for at least (5) five years. The applicant must submit a copy of his/her South African identity document. Applicants will submit all assets/ equipment that will lead to the effective use of the land including the amount of livestock that the applicant possess and, information about dependents as well as other assets.

## **9. TERMS OF AGREEMENTS**

The terms of Lease agreements will be agreed upon by the Council and the relevant individual or small farmer association or group. The lease agreement will clearly identify the land as it appears on the deed and the term for which the land will be leased.

The rent will be determined by the Municipality (in consultation with the Commonage Committee) from time to time

9.1 The lease agreement, will be determined by the type of farming of the individual /or small farmer association or group.

9.2 In the event of livestock farming, a grazing- agreement must also be entered into between the municipality and the individual or small farmer or group, the land users will remain subject to grazing- regulations as determined by the municipality.

9.3 The term of the lease will be determined on an ad hoc basis. As such, a long term contract will be directly linked to the type of project and sustainability thereof. Lessees must occupy the land for the purpose for which the lease agreement was entered into within 90 days of signature of the lease agreement.

9.3 Notwithstanding anything to the contrary, any lease agreement will be subject to the provisions of the Supply Chain Management Regulations, the Supply Chain Management Policy as well as the Municipal Asset Transfer Regulations relating to the granting of rights.

## **10. RENTAL AND SERVICE FEES**

The municipality will publish rental tariffs annually. Rental will be determined by the user will be responsible for service fees and costs for the provision of services within 90 days after a lease agreement has been established between the municipality and the individual or small farmer or group.

## **11. MAINTENANCE OF INFRASTRUCTURE AND SOURCES FOR FUNDING**

The Municipality will in cooperation with the emerging farmer associations and Agriculture prepare an inventory and report with regard to the condition of the infrastructure on the different commonage which inventory will be updated annually. The Municipality will be responsible for the awarding of water rights and water supply as well as the repair of broken fencing and camps before the commonage land user occupies the land. The Municipality will provide technical skills and advice to the commonage land users in respect of maintenance of the infrastructure on the commonage land. After signature of the relevant lease agreement the relevant individual or small farmer or group will be responsible for the maintenance and repair of the infrastructure. Commonage Land users will grant access to municipal workers to complete necessary maintenance.

## **12. ROLE PLAYER'S INTEGRATION**

The municipality can cooperate with role players, identified from time to time, who can deliver a positive contribution to the development of projects on the commonage and will have a coordinating function. The following role players have already been identified:

- Agriculture: Farmer settlement, training, soil tests, funding of infrastructure, crop planning, planting and maintenance as well as correct grazing methods
- Water Affairs: Grant assistance with access to water and water quality
- Rural Development: Acquisition of additional land and funding
- Environmental Affairs: Land usage. Other institutions e.g. Surplus People Project for institutional development and training

## **13. INSTITUTIONAL STRUCTURING**

Municipality

- a. The Council will ensure that Management Committees, that will be responsible for the management of the commonage is established.
- b. The Municipality will, to the extent at which it is permissible, wholly or partially, delegate

appropriate functions to appropriate functionaries to ensure handle the management of the commonage.

c. Commonage committees and land users Management Committees will be the governing bodies of the commonage, established in terms of a constitution and consisting of democratically elected land users and a municipal commonage official.

d. The Commonage Committee or any other department of the Municipality can, from time to time, attend Management Committee meetings as necessary.

e. The commonage will be managed according to an approved management plan which has to be submitted to Council for approval.

f. The Commonage Committee can make recommendations to the Council about any amendments that they deem to be important.

g. Any amendments to the management plan must be approved by Council before it can be implemented.

h. The Management Committees will be responsible for the conservation and maintenance of the commonage land in terms of the agency agreement with the municipality.

i. The Management Committees will operate in terms of each of their constitutions and will strictly obey the relevant code of conduct.

j. The Management Committees will submit a financial statement to the land users on a quarterly basis.

k. The Commonage Committee will annually present a consolidated and complete report and budget to the Council, including income and expenditures in order to monitor the project and to measure its sustainability.

#### **14. IMPERMISSABLE ACTIONS**

While some general rules are contained in this policy, they must be read together with the rules and provisions, contained in other relevant documents, and that are specifically relevant to certain parcels of commonage and projects.

No person may, without the prior consent of the Municipality may:

- erect any hut, shelter, pen, residence or structure of any nature or live, camp or squat on any, part of the commonage;
- collect, dump or deposit any car wrecks, other vehicles, machinery or any scrap thereof on any part of the commonage or permit that such materials are collected, dumped or deposited there;
- remove any soil, clay, sand, gravel or stone from the commonage;
- Manufacture bricks or erect kilns for the manufacture of bricks, lime or charcoal on the commonage;
- cut, damage, burn, destroy, collect or remove any plant, bark, trees, wood, firewood, thicket, manure or any grass that is, or grows, on the commonage and may not interfere with or cause damage to any fence, gate, cistern, crane equipment or thing or burn any grazing, bush, tree or shrub on the commonage, not use any roads, except those in respect of which the municipality has authorized the use from time-to-time usage of, as well as roads that the public may legally use;

- leave or deposit any poison, for whatever purpose, on the commonage;
- kill, catch, keep, hunt or attempt to kill any game or birds, of whatsoever description, that live on the commonage;
- set traps, of any description, on the commonage;
- destroy the nests or remove the eggs or chicks from the nests of any bird or moorhens where such nests appear on the commonage; or
- remove any fish in a dam, river or out of any water on the commonage.

Any person guilty of the above-mentioned can cause to the lease agreement to be terminated. The Municipality may take reasonable steps to do necessary repair work as a result of a violation. The Municipality may recover any such costs incurred by it from the person responsible for the violation.

### **15. EXEMPTION**

Any person may apply, by way of written representations and stating full reasons, apply to the Municipality for exemption from any terms of this Policy, from the Municipality.

The Municipality may:

- only grant written exemption where the conditions, if any, are set out as well as the period for which such exemption will be valid;
- amend or cancel any exemption or conditions in an exemption;
- refuse the granting of an exemption.

The exemptions only comes into effect after the applicant has signed a written undertaking to comply with all the conditions of the municipality. If any activity commences before such an undertaking is filed with the municipality, the exemption expires. The exemption expires immediately if any condition of the exemption is not complied with.

### **16. AGREEMENTS AND COMMONAGE MANAGEMENT PLANS**

The Municipality may, in consultation with the Commonage Committee, enter into a written agreement with any party regarding the use of the commonage or any part thereof or develop of a Commonage Management Plan in terms of which commonage can be managed and developed.

### **17. DEVIATION FROM THIS POLICY**

No deviations from the provision(s) of this policy shall be entertained.

### **18. IMPLEMENTATION**

The policy shall be implemented after adoption by council.