

# **Constitution of the Ekuthuleni Communal Property Association**

## **Preamble**

The residents of St Bernards wish to accept the donation of the properties on which they live from the Diocese of Marianhill.

## **1. The association and its purposes**

- 1.1 This constitution sets up the Ekuthuleni Communal Property Association (“the association”) whose purpose is:
  - 1.1.1 to take transfer of the properties known as Remainder of farm St Bernard no 17743 (“the land”) from the Diocese of Marianhill,
  - 1.1.2 to protect the rights of residents, households, and interest groups in the land and property of the association,
  - 1.1.3 to enable residents collectively to decide and control who lives on the land and how the land will be used,
  - 1.1.4 to facilitate development of infrastructure, projects and services for the benefit of residents.
- 1.2 The association is made up of all residents, and functions as a legal entity by means of the structures and procedures outlined in this constitution.
- 1.3 The association may increase its property by purchases from income or by transfer of assets to the association.

## **2. Residents**

- 2.1 A resident is a member of a household that holds a household site according to this constitution and whose home is on the land.
- 2.2 All residents who have reached the age of 18 years are adult residents.

## **3. General rights and duties of residents**

- 3.1 All adult residents have the right to
  - 3.1.1 attend, participate and vote at a community meeting,
  - 3.1.2 stand for election to the land committee,
  - 3.1.3 inspect the records of the association.
- 3.2 Residents have the right to seek recourse if they believe that their rights have been infringed.
- 3.3 Residents have a duty to know the constitution and the community rules, and to report breaches to the land committee.

- 3.4 Rights of residents must be exercised in accordance with this constitution and community rules approved in a community meeting.
- 3.5 Residents must pay levies approved in a community meeting.

#### **4. Rights and duties on household sites**

- 4.1 The boundaries of household sites as existing at transfer of the land to the association and the households that hold those must be confirmed in a community meeting after transfer and be placed on record as allocated land, as a pre-condition for transactions involving household sites.
- 4.2 The community meeting may not make decisions on major changes in land use inside the boundaries of occupied household sites or transfer the household site or a portion of the household site to another party without the consent of the household.
- 4.3 The adult members of a household must agree on household decision-making processes and on a household representative to act on their behalf.
- 4.4 Subject to household decisions, members of the household may:
  - 4.4.1 build houses,
  - 4.4.2 plough fields,
  - 4.4.3 open and run businesses which do not pose a threat to the health or well-being of residents,
  - 4.4.4 have portions of the household site pointed out for their particular use,
  - 4.4.5 permit relatives to live on the household site,
  - 4.4.6 enter into written agreements with residents outside the household to use part of their household site according to agreed boundaries for an agreed period,
  - 4.4.7 arrange for outsiders to guard their family or property while they are away from home. Such guards are not residents in terms of this constitution and are not eligible for allocation of sites.
- 4.5 The adult members of the household may decide:
  - 4.5.1 on major changes to the existing uses of the household site,
  - 4.5.2 to allocate a portion of their household site to members of their household to be demarcated and registered by the land committee for establishment of a new household site,
  - 4.5.3 that the household will leave the site.
- 4.6 If the household leaves the household site:
  - 4.6.1 it has no right to permanently transfer the site to any other party;
  - 4.6.2 it may sell structures on the site to residents meeting criteria for allocation of sites. See Clause 8.
- 4.7 The household representative must inform the land committee
  - 4.7.1 of proposed major changes in the use of a household site,

- 4.7.2 if the household plans to leave the land and who was involved in making this decision,
  - 4.7.3 if the household proposes to allocate a portion of their household site to members of their household for establishment of a new household site,
  - 4.7.4 if a relative comes to live with a household,
  - 4.7.5 if a person comes to guard a household,
  - 4.7.6 of written agreements allowing site use outside the household.
- 4.8 If the household representative changes, the outgoing household representative or members of the household must inform the land committee.
- 4.9 Households have a duty to pay levies imposed by a community meeting.

## **5. Rights and duties on unallocated land**

- 5.1 The use of land outside household sites and not subject to the terms of existing written agreements is determined by the community meeting which may:
- 5.1.1 decide that particular areas may be allocated, reserved or alienated for particular uses by residents or groups of residents or by other parties for the benefit of residents,
  - 5.1.2 decide that certain criteria or procedures will apply in the case of such allocation, reservation or alienation, where not already laid down in this constitution,
  - 5.1.3 decide on major changes in land use or in who uses such land,
  - 5.1.4 decide how money will be raised through use of the property and natural resources of the association and how such money will be spent,
  - 5.1.5 decide on all applications from non-residents to use the land,
  - 5.1.6 authorize the land committee to carry out any such decisions.
- 5.2 Residents already using land must be consulted if a major change in land or natural resource use or alienation of land is being considered.
- 5.3 Subject to community rules, all residents may
- 5.3.1 graze their livestock on those parts of the land set aside for grazing,
  - 5.3.2 use natural resources and plantations on the land.
- 5.4 Residents have the right to reasonable access to water sources for domestic purposes.
- 5.5 Subject to availability of land and existing written agreements, residents may apply to the land committee for allocation of land for household sites, shops and businesses and community projects. The land committee may allocate land for such purposes according to eligibility criteria set out in this constitution.

## **6. Community meeting**

- 6.1 The community meeting is the highest decision-making body of the association. It elects and instructs the land committee to carry out administrative tasks, and gives assistance in resolving disputes which cannot be resolved by the parties in the dispute or by the land committee.
- 6.2 The land committee must convene community meetings once every three months. The convenor must ensure that all residents have adequate notice of the meeting. If the land committee fails to convene community meetings, residents must remind them of this responsibility, and if they still fail to do so, ten residents may convene the community meeting.
- 6.3 In each year one of these community meetings must be an annual general meeting at which the land committee must report on the affairs of the association and elections for a new land committee may be held.
- 6.4 Urgent matters may be dealt with in community meetings convened between the three-monthly meetings.
- 6.5 All adult residents may attend, participate and vote at a community meeting. To make binding decisions at least one adult resident from at least 40% of households spread across major settlement areas must be present. Binding decisions are made by majority vote.
- 6.6 Minutes and a register of households from which adult residents are present must be kept for each community meeting making binding decisions.

## **7. Land committee**

- 7.1 A land committee is elected at the annual general meeting of the association to administer the affairs of the association and carry out the decisions of the community meetings. For these purposes it has the authority to:
  - 7.1.1 Sign legal documents on behalf of the association, including documents to take transfer of the land,
  - 7.1.2 Receive applications for land allocation, reservation or alienation,
  - 7.1.3 Make allocations where the application deals with matters for which procedures and criteria have already been laid down in a community meeting or in this constitution and refer such applications to the community meeting for decision where they have not,
  - 7.1.4 Represent the community in getting services, infrastructure and development projects,
  - 7.1.5 Convene community meetings,
  - 7.1.6 Enforce the constitution and the community rules,
  - 7.1.7 Receive, investigate and attempt to resolve disputes relating to matters dealt with in this constitution and the community rules, and refer disputes appropriately if they cannot be resolved,
  - 7.1.8 Create and update records relating to land administration, especially information on land allocation and use,

- 7.1.9 Make reports to the community meeting as required,
- 7.1.10 Open and operate a bank account on behalf of the association.
- 7.2 The land committee must have a minimum of 10 and a maximum of 15 members, which must include women and young persons. Members must be residents who are willing to work, and include those who have the strength and experience to take responsibility for land administration relating to each of the current major uses of land.
- 7.3 The term of office of the land committee must be a maximum of three years.
- 7.4 Elections for the land committee must take place at an annual general meeting.
  - 7.4.1 All adult residents have the right to stand for election to the land committee.
  - 7.4.2 Before elections, members of the outgoing committee must call for 30 nominations for the land committee and arrange for a neutral outsider to be present to offer help and observe the elections. Outgoing members of the land committee may stand for re-election.
  - 7.4.3 Residents who are present at the annual general meeting must vote by ballot paper or by any other means devised to secure confidentiality.
- 7.5 In the first meeting of the land committee after election, members of the committee must consider the tasks to be carried out and the strengths of committee members and from among themselves elect a chairperson, a deputy chairperson, a secretary, a deputy secretary, and a treasurer.
- 7.6 The land committee must meet at least once a month. Nine members of the land committee must be present to make binding decisions. Decisions are made by majority vote.
- 7.7 If offices within the land committee fall vacant, the remaining members must elect someone to fill them from among their number. If the total number of members falls below 10, the land committee must convene an urgent community meeting to elect replacement members to bring the number up to 15 members, who must serve until the end of the three-year term.
- 7.8 Meetings of the land committee may give authority to members with defined responsibilities to act alone or in teams or sub-committees to carry out particular tasks for a defined renewable period. Task teams or sub-committees may include residents outside the land committee or non-residents where the task requires it, and must report on their activities to the land committee. The land committee must inform the community meeting on all such passing of responsibility.
- 7.9 An induna who is also a resident must attend meetings of the land committee with particular responsibility to advise on matters relating to disputes and breaches of the constitution and the community rules, to support the land committee in resolving such matters, and to be part of task teams or sub-committees set up to handle such matters.

- 7.10 If a member of the land committee is accused by any resident of dishonesty in matters relating to the association, the remaining members or other residents so authorized by a community meeting must call in the police or other appropriate outside agent to investigate the matter. If the accused is found guilty, he or she must resign from the land committee, and may not stand for re-election.
- 7.11 If the land committee is unable to carry out its tasks, a community meeting may give authority to a resident or residents to take action needed to restore normal functioning of the association.

## **Land and property administration**

### **8. Allocation of household sites**

- 8.1 Residents wanting to establish new household sites must first apply to their own household for a portion of that household site. If the household agrees, the site allocated by it must be demarcated and registered by the land committee as a new household site.
- 8.2 A resident who is unable to access a new household site from his or her own household must apply to the land committee. If land is available for settlement, the land committee may allocate household sites to the households of residents who are:
- 8.2.1 either married sons of residents or daughters of residents over 45 years of age with children over 18 years,
  - 8.2.2 born at St Bernards,
  - 8.2.3 Christians who have respect *oyikholwa ohloniphayo*.
- 8.3 Priority must be given to applications from households whose sites are too small to establish new household sites.
- 8.4 The new household representative must be formally introduced in a community meeting.
- 8.5 Non-residents may not be allocated household sites.

### **9. Re-allocation of vacated household sites**

- 9.1 If a household plans to leave the household site, the household representative must inform the land committee. If the site has neither residents nor structures remaining on it, it becomes available for immediate re-allocation.
- 9.2 If all members of a household leave a household site without informing the land committee, the household site becomes available for re-allocation two years after the last occupants left, and the members of the household will have no further claim on it.

- 9.3 The land committee must inform residents in a community meeting when a household site is available for re-allocation.
- 9.4 A household leaving a site with structures on it has two years to find a buyer for the structures. Such a buyer must be a resident. After two years the buildings must be pulled down and the site left vacant for re-allocation.

## **10. Use of part of one household site by residents from outside the household**

- 10.1 A resident or group of residents wishing to use part of the site of another household must apply to the household representative.
- 10.2 Applicants must draw up a written agreement with the household that states the time period for which that part of the household site will be used, and the boundaries of the area to be used.
- 10.3 The household representative must inform the land committee of such agreements.

## **11. Allocation of land for community projects**

- 11.1 Residents wishing to use unallocated land for community projects must apply to the land committee with a proposal.
- 11.2 The proposal must make clear the principles on which the project will work and how benefits will be shared among participants in the project and with other residents, and these must be recorded in a written agreement between the applicants and the association. The agreement must describe the boundaries of the land to be allocated and the time frame for which it will be used.
- 11.3 The land committee may accept such a project. Projects which give opportunities for participation or employment to as many residents as possible must be given priority. Where possible, projects that offer employment should give turns to residents.
- 11.4 The community meeting must receive reports the progress of community projects.
- 11.5 At the end of the time period the land committee must review the agreement and decide whether it should be renewed.

## **12. Allocation of land for shops and businesses**

- 12.1 Residents wishing to set up shops or businesses on unallocated land must apply to the land committee.

- 12.2 A written agreement must be drawn up between the applicant and the association that describes the proposed shop or business, that states the time period for which the agreement will be in force, and the boundaries of the site to be used.
- 12.3 The land committee may only allocate land for shops or businesses which do not pose a threat to the health or well-being of residents.

### **13. Records and evidence of rights**

- 13.1 In consultation with interested parties, the land committee must create and update records of the following, to serve as evidence of the rights held by residents, and shall make these records available for inspection at the request of residents:
  - 13.1.1 all written documents relating to the allocation or alienation of the land,
  - 13.1.2 a register of households and the household sites that they hold,
  - 13.1.3 relatives who have moved onto household sites,
  - 13.1.4 guards living on household sites,
  - 13.1.5 copies of the constitution and community rules, and amendments to these,
  - 13.1.6 association finances,
  - 13.1.7 minutes of land committee and community meetings.
- 13.2 The land committee must keep a copy of the following records:
  - 13.2.1 agreements in which members of one household are using part of the household site of another household;
  - 13.2.2 historical records of land allocations and agreements from the time of previous ownership.
- 13.3 Boundaries of allocated sites must be marked with pegs, not stones.
- 13.4 The land committee must give a copy of the record relating to a household site to the household.

### **14. Finances**

- 14.1 A community meeting must decide
  - 14.1.1 how money will be raised from the use of the property of the association,
  - 14.1.2 how levies will be raised to maintain association property and enable delivery of services.
- 14.2 All money raised from the use of the property of the association or from levies must be kept in the bank account of the association, and spent as directed in a community meeting. Two office bearers of the Land Committee must authorize all payments.



- 14.3 Money raised on behalf of the association must be kept in the bank account of the association, and spent as indicated in agreements with donors.
- 14.4 The land committee must create and maintain financial records according to good bookkeeping practice and must make such records available to any resident who requests this.
- 14.5 The land committee must report to community meetings on income and expenditure.

## **15. Community rules**

- 15.1 There must be clear community rules that apply to all residents in order to support proper management of association land.
- 15.2 The land committee may set up teams to develop or change the community rules and devise appropriate punishments for breaking these or infringing this constitution. Such rules, changes and punishments come into effect after they are agreed to in a community meeting.
- 15.3 Residents must report breaches of rules to the land committee.
- 15.4 The land committee may set up task teams or sub-committees to investigate breaches of community rules. Residents found guilty are liable for the appropriate punishment.

## **16. Disputes**

- 16.1 The parties involved in a dispute about boundaries, rights or benefits flowing from the use of the land or property of the association, must first try to resolve the dispute themselves.
- 16.2 If the parties fail to resolve the dispute, the land committee must attempt to do so, working with neighbours or the community meeting as appropriate.
- 16.3 If the land committee fails to resolve the dispute, it must attempt to get the parties to agree on an outsider that both consider fair and to abide by his or her decision.
- 16.4 A dispute between a resident and the land committee that cannot be resolved must be referred to a community meeting.
- 16.5 If the dispute still cannot be resolved, the parties may apply to the Director General of Land Affairs for the appointment of a conciliator.

## **17. Recourse**

- 17.1 A resident dissatisfied with decisions relating to matters in this constitution or the community rules may complain to the land committee, who must investigate and attempt to resolve the matter.
- 17.2 If the resident is still not satisfied, he or she may apply to the Director General of Land Affairs for the appointment of a conciliator or may take the matter to court.

## **18. Changes to the constitution**

The community meeting may direct the land committee to set up task teams to develop changes to the constitution. Such changes come into effect after approval in a community meeting.

## **19. Dissolving the association**

A community meeting in which at least one adult resident is present from each of 60% of households spread across major settlement areas may dissolve the association and decide what must be done with the property and assets of the association. The disposal of occupied household sites is subject to the consent of each household.

## **COMMUNITY RULES**

### **Use of plantations**

Residents and non-residents wishing to cut poles for building must apply to the land committee for permission to cut poles and the responsible person must show the applicant where to cut. The charge for both residents and non-residents will be R2.00 per pole.