

KAROO HOOGLAND MUNICIPALITY

COMMONAGE MANAGEMENT BY-LAW

The Karoo Hoogland Municipality herewith adopts the following By-law in terms of section 156(2) of the Constitution of the Republic of South Africa, 1996:

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1. DEFINITIONS

- 1.1. In this By-law the English text prevails in the event of an inconsistency with the Afrikaans text and unless the context indicates otherwise:

“Act” means the Animal Identification Act, 2002 (No. 6 of 2002);

“animal” means any animal declared by the Minister of Agriculture in terms of section 2 of the Act, and **“livestock”** and **“stock”** shall have a corresponding meaning;

“Asset Transfer Regulations” mean the Municipal Asset Transfer Regulations published in terms of Government Notice No. R. 878 dated 22 August 2008 (Government Gazette No. 31348 of 22 August 2008);

“Constitution” means the Constitution of the Republic of South Africa, 1996 (No. 108 of 1996);

“commercial farmers” mean persons whose farms are set up for the sole purpose of producing crops and farm animals for sale, which may include the use of advanced technology, with the intention of making a profit;

“commonage” includes any-

- (a) land set aside by and granted to the Municipality by the state through specific Crown Lands Disposal legislation for the use and benefit of the residents of a particular town, and **“historical”** or **“traditional”** commonage shall have a corresponding meaning; or
- (b) land bought by the Municipality for rental against market related prices; or
- (c) land acquired post 1994 through the Land Redistribution for Agricultural Development Programme of the Department of Land Affairs and ownership transferred to the Municipality as commonage for the benefit of its residents with special emphasis on the poor and less privileged, and **“new”** commonage shall have a corresponding meaning.

“commonage liaison committee” means a committee established in terms of section 4 of this By-law;

“commonage management plan” means a plan developed and adopted by the municipal council as contemplated by section 3 of this By-law;

“commonage user groups” mean commercial, emergent, subsistence and proto-commercialist farmers who utilize commonage or any part thereof with the written approval of the Municipality, and **“commonage users”** shall have a corresponding meaning;

“depasture” means to allow any animal to graze on the commonage or any part thereof;

“Department of Agriculture” means the Department of Agriculture in the national sphere of government;

“Department of Land Affairs” means the Department of Land Affairs in the national sphere of government;

“emergent farmers” mean persons who have acquired a few livestock and intent expanding their stock but who have not yet reached the level of being self-sufficient in terms of capital and livestock assets and who aim to increase their stock; and who classify as indigents in terms of the municipal council’s policy or fall into the lower income groups;

“identification mark” has the meaning assigned to it by the Act;

“Integrated Development Plan” means a plan as contemplated by Chapter 5 of the Systems Act;

“municipal council” means the municipal council of the Municipality contemplated by section 157(1) of the Constitution;

“Municipal Finance Management Act” means the Local Government: Municipal Finance Management Act, 2003 (No. 56 of 2003);

“municipal manager” means the person appointed by the municipal council as the municipal manager in terms of section 82 of the Structures Act and includes any person acting lawfully as such;

“Municipality” means the Karoo Hoogland Municipality established in terms of section 12 of the Structures Act and includes any of the disestablished municipalities now incorporated in the Municipality, any political structure, political office bearer, councillor, duly authorized agent or any employee acting in connection with this By-law by virtue of a power vested in the Municipality and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;

“prescribed” means prescribed by the municipal council;

“Promotion of Administrative Justice Act” means the Promotion of Administrative Justice Act, 2000 (No. 3 of 2000);

“proto-commercialist farmers” mean persons who have already accumulated large numbers of stock and are in need of land in order to develop their own farming practice;

“provincial department” means a department in the provincial sphere of government in the Northern Cape Province;

“subsistence farmers” mean persons who want to keep a few livestock units for supplementing household food provision and who are not necessarily interested in expanding their current number of livestock, as their livestock is sufficient for own consumption;

“Structures Act” means the Local Government: Municipal Structures Act, 1998 (No. 117 of 1998);

“Systems Act” means the Local Government: Municipal Systems Act, 2000 (No. 32 of 2000);

“ward” means a ward delimited within the area of the Municipality as contemplated by Schedule 1 of the Structures Act;

2. PURPOSE AND OBJECTIVES OF THIS BY-LAW

2.1. The purpose of this By-law is to provide for access to and sustainable use and management of commonage within the area of the Municipality and specifically with the objective to promote local economic development and poverty alleviation by ensuring that:

- (a) new commonage serves as a stepping-stone for emergent farmers who intend to establish commercial agricultural enterprises and who qualify for a grant in terms of the Land Redistribution for Agricultural Development Programme of the Department of Land Affairs in order to acquire their own land for farming purposes; and
- (b) historical or traditional commonage is made available to commercial, emergent, subsistence and proto-commercialist farmers.

3. COMMONAGE MANAGEMENT PLAN

3.1. The municipal council must, with due regard to the integrated development planning process as envisaged by Chapter 5 of the Systems Act, in liaison with the community, any commonage liaison committee, provincial department responsible for agriculture, Department of Agriculture and any other interested role players develop and adopt a commonage management plan for the maintenance and utilization of the commonage and the preservation of the agricultural potential thereof.

3.2. The commonage management plan shall be reviewed annually as part of the Municipality’s Integrated Development Plan.

4. COMMONAGE LIAISON COMMITTEE

- 4.1. The municipal council shall with due regard to gender, youth and disability representatively establish a commonage liaison committee for each ward; provided that where practicable a commonage liaison committee may be established for a combination of wards.
- 4.2. Each commonage liaison committee shall be representative of commonage user groups as determined by the municipal council, the municipal manager, an official of the provincial department responsible for agriculture, an official of the Department of Agriculture and other interested role players who in the discretion of the municipal council may positively contribute to the sustainable implementation of the commonage management plan.
- 4.3. Each commonage liaison committee shall be chaired by the relevant ward councillor; provided that in the event of a combination of wards as envisaged by sub-section 4.1 the chairperson, who must be a councillor of one of the relevant wards, shall be appointed by the municipal council.
- 4.4. A commonage liaison committee does not constitute a political structure of the Municipality as contemplated by the Structures Act.

5. PROCEDURES AND FUNCTIONS OF COMMONAGE LIAISON COMMITTEE

- 5.1. The municipal council shall determine the internal procedures of each commonage liaison committee.
- 5.2. A commonage liaison committee shall have the following functions:
 - (a) to make recommendations to the municipal council on any matter within the council's competence with regards to the utilization and management of the commonage;
 - (b) to monitor the proper implementation of the commonage management plan;
 - (c) to evaluate applications from prospective commonage users and make recommendations to the municipal council on preferred users;
 - (d) to monitor compliance with any conditional approval as contemplated by section 7.5 of this By-law;
 - (e) to liaise with relevant role players on any matter pertaining to its functions and/or as directed by the municipal council and/or municipal manager; and

(f) report at least quarterly to the municipal council on its activities.

5.3. The municipal council shall within its financial and administrative capacity provide secretariat and administrative support to any commonage liaison committee for the execution of its functions.

6. TRANSFER OR DISPOSAL AND RIGHT TO USE, CONTROL OR MANAGE COMMONAGE

6.1. The transfer or disposal and granting of any rights to use, control or manage the commonage or any part thereof shall be subject to the provisions of the Asset Transfer Regulations, the Municipal Finance Management Act and any other relevant legislation.

6.2. The municipal council may levy and recover fees or tariffs in respect of the granting of any rights to use, control or manage the commonage or any part thereof as contemplated by Part 1, Chapter 8 of the Systems Act and for this purpose may differentiate between categories of commonage users.

6.3. Any person who has been granted a right to use, control or manage the commonage or any part thereof may partly or wholly be exempted from the payment of commonage fees or tariffs in accordance with the Municipality's indigent policy.

7. APPLICATION FOR USE OF COMMONAGE

7.1. No person shall keep or depasture any animal on any commonage or part thereof without first having obtained the written approval from the municipal council.

7.2. A person who wishes to obtain approval must submit a written application in the format as may be prescribed to the municipal manager.

7.3. The municipal manager shall process any application received with due regard to the provisions of section 6.1 of this By-law and invite the comments and recommendations of the commonage liaison committee, local community, provincial department responsible for agriculture, Department of Agriculture and any other interested parties.

7.4. The municipal council may grant or refuse any application after considering the following factors:

(a) the comments and recommendations as contemplated by sub-section 7.3;

- (b) the total number of animals already accommodated on the specific commonage or part thereof;
- (c) the number of animals, and the kind of animal, which the applicant wishes to depasture on the specific commonage or part thereof;
- (d) the grazing capacity of the commonage or part thereof, and if any further animals can be accommodated; and
- (e) any other factors or criteria which the municipal council deems to be fair and reasonable.

7.5. Any approval may be granted conditionally by the municipal council as contemplated by the Asset Transfer Regulations.

7.6. Any approval granted by the municipal council to use, control or manage the commonage or any part thereof is personal only, and no person shall be entitled to transfer or cede such right to another.

8. CRITERIA FOR SELECTION OF COMMONAGE USERS

8.1. The municipal council shall consider the following criteria for the granting of any rights to use, control or manage the commonage or any part thereof:

- (a) sound and implementable business plan with potential for funding;
- (b) equal representative groups (Youth, Women and Disabled);
- (c) job creation;
- (d) food security;
- (e) income generation;
- (f) environmentally, economically and social sound;
- (g) skills transfer;
- (h) registration in terms of legal entity;
- (i) registration as members of emerging farmer associations within the municipal area.
- (j) Permanent residency in the municipal area;
- (k) indigent or income status; and
- (l) any other criteria which the municipal council deems to be fair and reasonable.

9. CONFINEMENT OF ANIMALS

- 9.1. Any person who has been granted any rights to keep or depasture any animal on any commonage or part thereof shall confine the animals to such area or areas as designated by the municipal council.

10. GRAZING CAPACITY AND CONDITION OF ANIMALS

- 10.1. The Municipality shall with the assistance of the Department of Agriculture determine the grazing capacity of the commonage or any part thereof and the number and kinds of animals that may be accommodated thereon.
- 10.2. Any person who has been granted approval by the municipal council to keep or depasture any animal or animals on the commonage or any part thereof shall ensure that such animal is in a healthy condition.
- 10.3. The Municipality shall require from any person who has been granted approval by the municipal council to keep or depasture any animal or animals on the commonage or any part thereof to file with the municipal manager a sworn declaration as to the ownership and condition of such animal or animals.
- 10.4. Any person who has been granted approval by the municipal council to keep or depasture any animal or animals on the commonage or any part thereof and who:
- (a) keeps more than the determined number of animals as contemplated by sub-section 10.1 on the commonage or part thereof;
 - (b) fails to keep any animal in a healthy condition as contemplated by sub-section 10.2;
 - (c) fails to file a declaration as contemplated by sub-section 10.3; or
 - (d) provides false information to the Municipality, commits an offence.

11. IDENTIFICATION OF ANIMALS

- 11.1. Any person who with the approval of the municipal council depastures any animal on the commonage or part thereof shall ensure that such animals are registered with an identification mark as contemplated by the Act.
- 11.2. Any person who contravenes sub-section 11.1 commits an offence as contemplated by section 16 of the Act.

12. INFECTED OR CONTAGIOUS ANIMALS

- 12.1. No person shall depasture, bring, keep or leave any animals suffering from, or suspected of being infected with, any contagious or infectious disease, on the commonage or any part thereof.
- 12.2. Any animal found on the commonage or any part thereof suspected of being infected with any contagious or infectious disease shall, at the cost of the owner, be inspected by a veterinarian, and if he or she finds that the disease is contagious or infectious, the Municipality may cause such animal to be isolated or destroyed.
- 12.3. Any actions by the Municipality as envisaged by sub-section 12.2 shall be taken with due regard to section 33 of the Constitution and the provisions of the Promotion of Administrative Justice Act.

13. CARCASSES OF ANIMALS

- 13.1. The owner of any animal which has died on the commonage or any part thereof shall immediately cause the carcass to be buried, and should he or she fail to do so, the Municipality will bury the carcass and claim the expenses from the owner.
- 13.2. Any actions by the Municipality as envisaged by sub-section 13.1 shall be taken with due regard to section 33 of the Constitution and the provisions of the Promotion of Administrative Justice Act.

14. PROHIBITED CONDUCT

- 14.1. No person shall without the prior written consent of the municipal council:
 - (a) erect any hut, shelter, kraal, habitation or structure of any kind nor occupy, camp or squat on any portion of the commonage;
 - (b) accumulate, dump or deposit or cause to be accumulated, dumped or deposited on any portion of the commonage any waste, scrap, derelict motor cars or other vehicles or machinery or any derelict parts thereof;
 - (c) dig on or remove any soil, clay, sand, gravel, boulders or any minerals from the commonage;
 - (d) make bricks or erect brick-, lime- or charcoal kilns on the commonage;

- (e) cut, damage, burn, destroy, gather or remove any plants, shrubs, trees, timber, firewood, brushwood, manure or any grass growing or being upon any portion of the commonage;
- (f) interfere with or cause damage to any fence, gate, drinking trough, water tap or other appliance or thing or set fire to the pasture or any bush, tree, shrub on the commonage;
- (g) make use of any road over the commonage other than roads allowed to be used by the Municipality from time to time, and roads that the public have a legal right to use;
- (h) deposit or in any way leave or dispose of any poison or pesticides for whatever purpose on the commonage;
- (i) kill, catch, capture or hunt or attempt to kill any game or birds of whatsoever description on the commonage;
- (j) set traps of whatsoever description on the commonage;
- (k) remove any bees, hives or honey from the commonage;
- (l) destroy the nests or remove the eggs or young therefrom of any birds of whatsoever description on the commonage; or
- (m) fish in any dam, river or any other water source on the commonage.

14.2. The Municipality may take, or cause to be taken, any steps necessary to rectify any contravention of subsection 14.1 and may claim the costs incurred by the Municipality from the person responsible for the contravention.

14.3. Any actions by the Municipality as envisaged by sub-section 14.2 shall be taken with due regard to section 33 of the Constitution and the provisions of the Promotion of Administrative Justice Act.

15. COMMONAGE MAINTENANCE

15.1. The municipal manager shall in terms of the Municipality's asset management plan prepare an inventory of all equipment, infrastructure and installations on any commonage and such inventory shall be updated annually.

15.2. The municipal manager shall ensure that all equipment, infrastructure and installations on any commonage are in a good state and working order.

15.3. Subject to the provisions of section 16.1(a) of this By-law, shall the general repair and maintenance of all equipment, infrastructure and installations on any commonage be the responsibility of the Municipality.

16. LIABILITY

16.1. Any person who has been granted any rights to keep or depasture any animal on any commonage or part thereof shall be liable for:

- (a) the general repair and maintenance of any equipment, infrastructure and installations, inclusive of fences, irrigation systems and water troughs, on such commonage for the duration of such right, unless otherwise determined by the municipal council.
- (b) any damages to or loss of any equipment, infrastructure or installations on such commonage caused by such person or his or her animal or animals; or
- (c) any damages resulting from non-compliance of any condition of approval.

17. ACCESS TO AND INSPECTION OF COMMONAGE

17.1. The municipal manager or any staff member of the Municipality or any member of any commonage liaison committee authorized by the municipal manager, may enter any commonage or any part thereof to which a right has been granted as contemplated by section 7.1 of this By-law, at any reasonable time to:

- (a) inspect such commonage in order to ensure compliance with this By-law or to perform official duties;
- (b) question any person who he or she believes may have information relevant to the inspection; or
- (c) require any person to produce for inspection any document in relation to the enforcement of this By-law.

18. EXEMPTIONS

18.1. Any person may by means of a written application, in which the reasons are given in full, apply to the municipal council for exemption from any provision of this By-law.

18.2. The municipal council may:

- (a) grant an exemption in writing and stipulate the conditions, if any, and the period for which such exemption is granted;
- (b) alter or cancel any exemption or condition in an exemption; or
- (c) refuse to grant an exemption.

18.3. An exemption shall not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the municipal council as contemplated by section 7.5 of this By-law.

19. AUTHENTICATION AND SERVICE OF NOTICES AND OTHER DOCUMENTS

19.1. A notice issued by the Municipality in terms of this By-law is deemed to be duly issued if the municipal manager or a delegated official of the Municipality has signed it.

19.2. Any notice or other document that is served on a person in terms of this By-law is regarded as having been duly served:

- (a) when it has been delivered to that person personally;
- (b) when it has been left at that person's place of residence or business in the Republic of South Africa with a person apparently over the age of 16 years;
- (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic of South Africa and acknowledgment of the posting thereof from the postal service is obtained;
- (d) if that person's address in the Republic of South Africa is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by sub-sections (a), (b) or (c);
- (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;
- (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate; or
- (g) when it has been delivered, at the request of that person, to his or her email address.

19.3. Service of a copy of any notice or document shall be deemed to be service of the original.

19.4. When any notice or other document is served on the owner, occupier or holder of any property or right in any property, it is sufficient if that person is described in the notice or other document as the owner, occupier or holder of the property or right in question, and it shall not be necessary to name that person.

20. DELEGATIONS AND APPEAL

- 20.1. Any power or duty conferred on the municipal manager in terms of this By-law may be delegated or sub-delegated to a member of the municipal staff subject to the provisions of section 59 of the Systems Act.
- 20.2. A person whose rights are affected by a decision taken in terms of this By-law by a political structure, political office bearer, councillor or staff member of the Municipality in accordance with a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member may appeal against that decision as contemplated section 62 of the Systems Act.

21. OFFENCES AND PENALTIES

- 21.1. A person who contravenes any provision or fails to comply with any provision of this By-law commits an offence and shall on conviction be liable to:
- (a) a fine or imprisonment or both such fine and such imprisonment;
 - (b) in the case of a continuing offence, to an additional fine or an additional period of imprisonment or to such additional imprisonment without the option of a fine or to both such additional fine and imprisonment for each day on which such offence is continued; and
 - (c) a further amount equal to any costs and expenses found by the court to have been incurred by the Municipality as result of such contravention or failure.

22. CONFLICT WITH OTHER LEGISLATION

- 22.1. In the event of any conflict between a provision of this By-law and any other legislation within the functional areas of concurrent national and provincial legislative competence or functional areas of exclusive provincial legislative competence, such latter legislation shall prevail.

23. REPEAL OF BY-LAWS

- 23.1. Any provision in a by-law previously promulgated by the Municipality or by any of the disestablished municipalities now incorporated in the Municipality which relates to any aspect provided for in this By-law, is herewith repealed.

24. SHORT TITLE AND COMMENCEMENT

24.1. This By-law shall be called the Commonage Management By-Law of the Karoo Hoogland Municipality and shall come into operation on the date of publication thereof in the Provincial Gazette.

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