



# NELSON MANDELA BAY DRAFT BYLAW

Draft Bylaw relating to Land Invasion  
and Management and Control of  
Informal Settlements

*Working Draft 3.1 for Public Participation*

September 2017

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**Nelson Mandela Bay Metropolitan Municipality  
DRAFT LAND INVASION BYLAW FOR PUBLIC PARTICIPATION WD3.1**

<b>TITLE OF BY-LAW</b>	<b>BY-LAWS RELATING TO LAND INVASION AND THE MANAGEMENT AND CONTROL OF INFORMAL SETTLEMENTS</b>
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**DOCUMENT HISTORY:**

By-law Title	Status	Approving Authority	Decision date	Resolution No.	Ref No.	Doc No.	Pending date for next revision
Land Invasion Policy (2011)	Not approved				Version 1	D20110212	
Land Invasion By-law (2012)	Not Approved				Version 2	Version 2012 – G Richards	
Draft By-law Review – WD	New Working Draft (WD) prepared by HVA based on versions 1 and 2				Version 3.0	WD3.0/20161114	
Draft By-law Review - WD	Revision 1 of WD based on discussion HVA and SP on 28/11/2016				Version 3.1	WD3.1 20170919	

**NELSON MANDELA BAY METROPOLITAN MUNICIPALITY:  
BY-LAWS RELATING TO LAND INVASION AND THE MANAGEMENT AND  
CONTROL OF INFORMAL SETTLEMENTS**

Under the powers conferred by section 156 of the Constitution of the Republic of South Africa, 1996 the Nelson Mandela Bay Metropolitan Municipality enacts as follows –

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**1. Definitions**

In this by-law, unless the context otherwise indicates –

**“allocate”** means to assign a specific number to a site, stand or structure in an informal settlement for administrative purposes without granting any rights or security of tenure;

**“authorised informal settlement”** means any informal settlement which is recognised by the Municipality as an authorised informal settlement and which will be formalised and upgraded to a formal township in terms of the Municipality's existing housing policies and programmes;

**“authorised official”** means the authorised official appointed or assigned in terms of section 3;

**“consent”** means the express or implied consent of the owner or person in charge to the occupation of land by a resident of a shack, irrespective of whether such consent was given in writing or otherwise;

**“contractual agreement”** means the contractual agreement entered into between the head of a household and the Municipality in terms of which the household is authorised to occupy a shack in an authorised informal settlement;

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“**court**” means any division of the High Court or the magistrate’s court in whose area of jurisdiction the land is situated;

“**eviction**” means the permanent removal, in accordance with the provisions of a court order, of a person and his or her personal property from occupation of a shack or the land on which the shack is constructed, and includes the demolition and removal from the land of any building materials used to construct the shack, and “**evict**” has a corresponding meaning;

“**head of the household**” means –

- (a) the *de facto* head of a household;
- (b) the single parent, where the household has only one parent with dependants living permanently with him or her in the household; and
- (c) any person in the household who has legal capacity to act and is recognized by the majority of the other persons in the household as the person responsible for the maintenance of the welfare and discipline within the household;

“**informal settlement**” means one shack or more constructed on land, with or without the consent of the owner of the land or the person in charge of the land;

“**land**” means any land or building within the area of jurisdiction of the Municipality, irrespective of whether such land belongs to the National Government, the Provincial Government, the Municipality or a private individual, company or other legal entity;

“**land invasion**” means the illegal occupation of any land or building or any settlement or occupation of any number of people on land or in a building without the express or tacit consent of the owner of the land or building or the person in charge of the land or building, or without any other right in law to settle on or occupy such land or building;

“**Land Invasion Unit**” means a group of officers or workers consisting of any combination of one or more of the following components:

- (a) Members of the South African Police Service;
- (b) members of the Municipality’s Metropolitan Police Service;
- (c) members of the staff of the bailiff, sheriff or messenger of the court with jurisdiction in the area;
- (d) members of a private security company contractually engaged by the Municipality to perform certain duties on its behalf; and
- (e) any combination of employees of the Municipality,

which group is designated by the Municipality to assist the authorised official in the execution of his or her duties and to execute any eviction order contemplated by section 5 to terminate an unauthorized informal settlement;

“**Municipality**” means the Nelson Mandela Bay Metropolitan Municipality, established in terms of Section 12 of the Municipal Structures Act, 117 of 1998, and includes any political structure, political office bearer, councillor, duly authorised 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;

**“National Housing Needs Register”** means the consolidated National Housing Needs Register that is the only official database from which prospective beneficiaries will be drawn and be invited to complete housing subsidy application forms

**“owner”** means the registered owner of land, irrespective of whether such owner is the National Government, the Provincial Government, the Municipality or a private individual, company or other legal entity;

**“person in charge”**, in relation to land, means a person who has the legal authority to give permission to another person to enter or reside on that land;

**“shack”** means any temporary shelter, building, hut, tent, dwelling or similar structure which does not comply with the provisions of the National Building Regulations and Building Standards Act, 1977 (act 103 of 1977), the regulations promulgated under that Act and the Municipality’s Building Control By-laws and which is primarily used for residential purposes; and

**“unauthorized informal settlement”** means any informal settlement which is not recognized by the Municipality as an authorised informal settlement and which will not be formalised and upgraded to a formal township in terms of the Municipality’s existing housing policies and programmes, but will be demolished and removed in terms of this by-law.

## **2. Application, principles and objectives of by-law**

(1) This by-law applies to all land and informal settlements within the area of jurisdiction of the Municipality.

(2) In principle it is recognised that:

- (a) The municipality is faced with the continuous proliferation of informal settlements and land invasion, particularly on the periphery of the urban areas and that most of these informal settlements have developed through the invasion of privately or state-owned land which makes service delivery implementation by the municipality difficult;
- (b) The process of transferring such occupied land to the municipality is cumbersome and restricts the municipality from exercising its mandate in rendering basic services to the affected communities;
- (c) Illegal letting or the ‘selling’ of sites by individuals who plan and lead land invasions are prevalent; and
- (d) The municipality has developed an informal settlements upgrading and management plan and housing delivery plan which forms part of the Integrated Development Plan as an attempt to expedite housing delivery to its homeless citizens. The following housing related issues present immediate challenges that require tailor-made policy intervention:
  - (i) Poverty and unemployment;
  - (ii) Past policies that prevented people from obtaining housing in urban areas;
  - (iii) “Jumping the queue”, hoping to receive an allocation sooner;

- (iv) Shortage of developed land in the vicinity of job opportunities;
- (v) Encouragement of unlawful land occupations for political and financial gain;
- (vi) Sporadic illegal invasion of municipal land;
- (vii) Abandoned shacks where beneficiaries have been relocated;
- (viii) The unlawful sub-letting and vacating of dwellings, leaving sub-tenants in occupation; and
- (ix) The illegal selling of houses before the expiry of the applicable sales restrictions; and
- (x) Management of informal settlements and the provision of socio-economic amenities.

### **3. Appointment of authorised official**

The Municipality may appoint an official or assign one of its officials as its authorised official to manage and control all the informal settlements in accordance with the provisions of this by-law.

### **4. Duties of the authorised official**

The authorised official must –

- (a) conduct regular surveys to determine the location, origin and extent of and the conditions prevailing in each informal settlement;
- (b) monitor and control all informal settlements and take the necessary steps to prevent land invasion within the area of jurisdiction of the Municipality;
- (c) undertake and promote liaison and communication with local communities with a view to obtaining their understanding and cooperation regarding the prevention of land invasion in the area of jurisdiction of the Municipality;
- (d) keep a register of all the residents who are entitled to reside in each authorised informal settlement, and in such register the following details must be entered in respect of each shack in each authorised informal settlement:
  - (i) The number allocated to the stand or site on which the shack is constructed;
  - (ii) the name and identity number of the head of the household who is entitled to occupy the shack;
  - (iii) the names, identity numbers and relationships to the head of the household of each and every other person occupying the shack as a member of the household;
  - (iv) the reference number of the file of the authorised official that contains a copy of the contractual agreement in respect of the shack;
  - (v) the number of the shack's rental account;
  - (vi) the number of the shack's municipal services account;
  - (vii) the previous address of the household that is entitled to occupy the shack; and
  - (viii) the names, addresses and telephone numbers, if any, of at least two family members of the head of the household who do not live at the same address as the household that is entitled to occupy the shack;

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- (e) ensure that all the residents living in an authorised informal settlement are registered in the Municipality's National Housing Needs Register;
- (f) submit quarterly written reports on the control and management of any informal settlement, or the conditions prevailing in the informal settlement to the Municipality;
- (g) for the purpose of informing residents of informal settlements, ensure that a copy of this by-law is posted on the municipal website, is available at the venue where the residents' committee contemplated in section 6 usually holds its meetings and at municipal libraries and the office of the relevant ward councillor;
- (h) allocate to each site or stand in an authorised informal settlement a unique number as the temporary address of the site or stand and must ensure that such number is legibly painted or inscribed in a prominent place on the site or stand;
- (i) ensure that no new unauthorised shacks are erected in any informal settlement and that no new unauthorised residents take up residence in such an informal settlement; and
- (j) perform any other duty or function which may be necessary to ensure the proper management and control of an informal settlement.

**5. Incidents of land invasion**

- (1) The authorised official must, within a period of 24 hours after he or she becomes aware of an incident of land invasion or the existence of a newly established informal settlement, irrespective of whether such informal settlement was established as a consequence of an incident of land invasion or not -
  - (a) commence with the process prescribed by the Municipality regarding the determination of the status of the informal settlement as an authorised or an unauthorised informal settlement in terms of the Municipality's existing housing policies and programmes;
  - (b) complete the process contemplated in subsection (1)(a) within 48 hours after commencement; and
  - (b) inform the residents regarding the commencement of the process to determine the status of the informal settlement and that, depending upon the outcome of the determination, the informal settlement will be dealt with in accordance with section 6 or section 8, whichever is applicable in the circumstances.
- (2) In the event of the status of an informal settlement contemplated in subsection (1) being determined as an authorised informal settlement, the authorised official must deal with the matter in accordance with the provisions of section 6.
- (3) In the event of the status of an informal settlement contemplated in subsection (1) being determined as an unauthorised informal settlement, the authorised official must deal with the matter in accordance with the provisions of section 8.

**6. Residents' committees**

(1) A meeting of residents in each authorised informal settlement must be convened annually on a date and at a venue determined by the authorised official to elect a residents' committee comprising a chairperson, deputy chairperson, secretary and six ordinary members to represent the views and interests of the residents of the authorised informal settlement in all consultative processes between the Municipality and the residents of the authorised informal settlement.

(2) A residents' committee contemplated in subsection (1) and the authorised official, or his or her designated representative, must meet on a regular monthly basis, and at such meetings the Municipality must consult the residents' committee on all matters relating to the authorised informal settlement and communicate matters of general concern to the residents on a collective basis. After such meetings, it is the sole responsibility of the residents' committee to inform the individual residents of matters discussed at the meetings.

(3) Special meetings of residents may be convened from time to time by a residents' committee contemplated in subsection (1) to communicate with and inform the individual residents of matters relating to the authorised informal settlement.

(4) A residents' committee contemplated in subsection (1) must give notice of a meeting of the residents of the authorised informal settlement by placing the notice prominently on the official notice board at a venue whose location has been determined by the residents' committee and communicated to the residents at an official meeting of the residents.

## **7. Procedures relating to the management and control of authorised informal settlements**

(1) As soon as a determination of the status of an authorised informal settlement has been made and within the period contemplated in section 5(1), the authorised official must-

- (a) personally or through a subordinate official designated by him or her for that purpose, visit the informal settlement and notify the residents of the status of the authorised informal settlement in the manner contemplated in section 7(2) or by means of a letter delivered to each shack in the informal settlement, whichever is appropriate in the circumstances;
- (b) compile a comprehensive register of all the residents who are entitled to reside in the authorised informal settlement contemplated in subsection (1), and the details set out in section 4(4) must be entered in respect of each shack in the authorised informal settlement;
- (c) ensure that the names, addresses and other relevant details of all the household heads living in an authorised informal settlement contemplated in subsection (1) are registered in the Municipality's National Housing Needs Register list;
- (d) allocate to each site or stand in an authorised informal settlement contemplated in subsection (1) a unique number as the temporary address of the site or stand and must ensure that the number is



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legibly painted or inscribed in a prominent place on the site or stand;  
and

- (e) ensure that no new unauthorised shacks are constructed in the authorised informal settlement contemplated in subsection (1) and that no new unauthorised residents take up residence in the authorised informal settlement by implementing appropriate measures to manage, monitor and control the occupancy of residents in the authorised informal settlement in general.
- (2) Any unauthorised occupancy in an authorised informal settlement contemplated in subsection (1) must be dealt with in accordance with the provisions of section 8.
- (3) In respect of an authorised informal settlement contemplated in subsection (1), the authorised official must ensure that -
- (a) the Municipality's Budget and Treasury directorate institutes, operates and maintains an appropriate account for services rendered by the Municipality to each registered shack in the authorised informal settlement and for any charges levied for the right of occupation of a particular site or stand in the authorised informal settlement; and
  - (b) such an account is supplied to the head of the household of each registered shack in the authorised informal settlement.

**8. Procedures relating to the termination of unauthorised informal settlements**

- (1) As soon as a determination of the status of an unauthorised informal settlement has been made, the authorised official must, personally or through a subordinate official designated by him or her for that purpose, visit the informal settlement and notify the residents of the status of the unauthorised informal settlement by means of a written notice hand-delivered to each shack in the informal settlement.
- (2) The written notice contemplated in subsection (1) must -
- (a) notify the residents of a shack in the unauthorised informal settlement that their occupation of the shack and the site or stand on which it is situated is illegal; and
  - (b) request the residents of the shack to vacate the shack and remove any building materials and other personal property from the unauthorised informal settlement within a period of 24 hours after receipt of the written notice.
- (3) If the residents notified in terms of subsection (1) cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorised informal settlement, the authorised official must take such steps as he or she may deem appropriate to prevent a recurrence of any incident of land invasion or illegal land occupation on that site, stand or unauthorised informal settlement and must regularly monitor the situation to ensure the non-recurrence of such land invasion or illegal land occupation.

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(4) If the residents notified in terms of subsection (1) fail to cooperate and vacate their shacks and remove their building materials and other personal property from the site or stand in the unauthorised informal settlement, the authorised official must immediately institute the necessary legal procedures to obtain an eviction order contemplated in subsection (5).

(5) Within a period of 24 hours after the expiry of the period stipulated in the written notice contemplated in subsection (1), the authorised official must lodge an application in a competent court to obtain an eviction order contemplated in section 4, 5 or 6 of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998), against any person or persons, jointly or severally, occupying or residing in a shack or on a site or stand in the unauthorised informal settlement.

(6) The authorised official must, within a period of 24 hours after obtaining the eviction order referred to in subsection (5), deploy the Land Invasion Unit to execute the eviction order and to terminate the unauthorised informal settlement by

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- (a) evicting the residents of the unauthorised informal settlement;
- (b) demolishing and removing all shacks and removing all building materials and other personal property from the unauthorised informal settlement; and
- (c) disposing of the building materials and other personal property in accordance with the provisions of this by-law.

(7) Any costs incurred by the authorised official for the purposes of executing the provisions of this by-law must be borne by the Municipality in accordance with its approved budget.

**9. Removal and disposal of building materials and personal property**

(1) In the execution of the provisions of section 8(6), any building materials and other personal property belonging to a resident or occupier of a shack in an unauthorised informal settlement must be removed and stored in a safe place by the authorised official.

(2) The authorised official must compile and maintain a register in which is recorded -

- (a) particulars of all building materials or other personal property removed and stored in terms of this by-law, save where it is manifest that the item is waste material;
- (b) the date of the removal and storage of building materials or other personal property in terms of subsection (1) and the name and site or stand number of the owner of the building materials or personal property; and
- (c) (i) the signature or left thumb print of the person who is claiming ownership and to whom delivery of building materials or other personal property has been made; or

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- (ii) full details of the amount realized on the sale of building materials or other personal property in terms of subsection (2) and the date of the sale.
- (3) The authorised official must photograph all material removed and record the place, date, and time of removal and record it by a cross reference to the inventory.
- (4) Officials deployed to perform the exercise must be clearly identifiable as officials of the Municipality, and a log must be kept of the name of every official who is present at every such exercise.
- (5) When intent on removing material from a public place, officials must make reasonable enquiries in the immediate vicinity as to the presence of possible claimants of the material sought to be removed, and if they can be located, and their identity confirmed, and they can demonstrate, convincingly, that that any item is their belongings, they must:
  - (a) be put in possession of all items that they are able to carry away; or
  - (b) be invited to call at a designated place during office hours to collect the balance of their claimed possessions, which shall, in the inventory, be so recorded, and the items tagged.
- (6) All such items removed must be kept in a designated place for not less than 30 days.
- (7) A notice must be displayed at the place from which the materials were taken and it must contain information about where the material is being kept, for how long, and the procedure to retrieve any items, the name of the official responsible for the safekeeping of the material, and that person's telephone number and e-mail address.
- (8) If the building materials and other personal property contemplated in subsection (1) are not claimed by their owner within a period of thirty days after the date of the removal and storage, the Municipality may, after obtaining a court order authorizing such action, dispose of the building materials and personal property in a manner prescribed by the court and the proceeds must be deposited into the Municipality's Revenue Account, provided that, subject to the laws governing the administration and distribution of estates, nothing contained in this subsection may deprive the heir of any deceased person of his or her right to the balance of the proceeds of the property.
- (9) Employees and councillors of the municipality, or a family member, or a close associate of any municipal employee or councillor, may not purchase any goods offered for sale in terms of this by-law, either personally or through any other person, directly or indirectly.
- (10) Neither the municipality nor any of its officials acting within the reasonable scope of their authority are liable for any loss of or damage to property or injury to any resident or occupier of a shack in an unauthorised informal settlement or any other person for any reason whatsoever.

**10. Prohibited conduct**

- (1) No person may –
  - (a) individually or as part of a group -

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- (i) clear any land of any vegetation without the prior written consent of the owner;
  - (ii) invade or occupy any land to which he or she does not have lawful title;
  - (b) erect a structure on any land to which he or she does not have lawful title;
  - (c) continue with the construction of an incomplete structure after a written warning to stop construction was issued by the municipality;
  - (d) demarcate or continue to demarcate any piece of land with any form of material, including, but not restricted to string, rope, pegs, stones, pebbles, wire, wood or any other material after a written warning to stop any form of demarcation was issued by the municipality;
  - (e) move or remove any demarcation or surveying pegs affixed in terms of any law;
  - (f) without the written consent of the municipality allow, encourage, motivate, organise or instigate the occupation of any land;
  - (g) move furniture into an informal structure in order to defeat the provisions of any law;
  - (h) without the written consent of the municipality allow a shack or structure to be unoccupied for more than 3 months;
  - (i) erect any additional shack or structure on a site in any existing informal settlement or reception area;
  - (j) lease any additional shack or structure on a site in any existing informal settlement or reception area;
  - (k) access land in contravention of a sign prohibiting such access;
  - (l) occupy a structure on any land to which he or she does not have lawful title;
  - (m) sell any land or structure on any land to which he or she does not have lawful title; or
  - (n) interfere with or obstruct an authorised officer in the execution of his or her duties in terms of this by-law.
- (2) A person who contravenes a provision of subsection (1) commits an offence.

**11. Existing informal settlements**

- (1) Where an existing informal settlement has been provided with rudimentary services by the municipality or where the municipality allocated a number to a structure or a stand, such supply of services or such allocation of a number does not amount to the granting of any right to any person to permanently reside on such land.
- (2) The numbering of a stand or a structure does not itself in any manner mean that the yard fenced in or on which a shack or building has been erected and so numbered is a surveyed stand.
- (3) The occupant of a shack or structure contemplated in subsections (1) and (2) has no right to the land and cannot claim ownership of the land on whatever

basis including the period of occupation of such land and this include cases where money has been exchanged with whomever under the pretext that land acquisition is being effected by such transaction.

**12. Duties of ward councillors and ward committee members**

(1) Ward councillors and ward committee members must report all cases of illegal occupation of land within their wards of which they are aware or of which they should reasonably be aware, whether it is council property or not, to the authorised official.

(2) Any person who contravenes the provisions of subsection (1) is guilty of an offence.

**13. Restriction of Liability**

No authorized employee of the municipality shall be liable in respect of anything done in good faith in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law.

**14. Appeal**

(1) A person whose rights are affected by a decision of the municipality may appeal against that decision by giving written notice of the appeal and the reasons therefore in terms of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000 to the municipal manager within 21 days of the date of the notification of the decision.

(2) Any person making a decision or exercising a discretion in terms of this by-law must inform any person affected by such decision or exercise of discretion that he or she has a right to appeal in terms of subsection (1).

**15. Repeal of by-laws**

The provisions of any by-laws previously promulgated by the municipality or by any of the disestablished municipalities now incorporated in the municipality are hereby repealed as far as they relate to matters provided for in this by-law.

**16. Short title and commencement**

This by-law shall be known as the By-law Relating to Land Invasion and the Management and Control of Informal Settlements of the Nelson Mandela Bay Metropolitan Municipality and comes into operation on the date of publication thereof in the Provincial Gazette.