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1.0 ADMINISTRATIVE STATUS

Since 01 January 1995, Mdantsane has legally formed part of the East London Transitional Local Council (EL TLC) area as per Proclamation No. 79 of 1994. Reference to Mdantsane in this regard includes the areas of Mdantsane East Industrial Fort Jackson and Potsdam.

Although situated within the EL TLC area, the issue of Administrative Procedure and Jurisdiction over Mdantsane has been the subject of some legal debate. In this regard the following facts were reported to apply to the area by Messrs Hofmeyr-Attorneys (March, 1996).

- Following the promulgation of Proclamation 79 of 1994, the East London TLC, as successor-in-title to the former administrative authority of Mdantsane (listed in the Proclamation as the Town Council of Mdantsane, which aspect is considered by the Hofmeyr Memorandum [pg. 10-22]) was legally empowered and responsible to administer Mdantsane from 1 January 1995, in terms of the legislation that applied to the area before the establishment of the TLC.
- Legal opinion is that, following the proclamation of the EL TLC, the provisions of both Proclamation R293 of 1962 (as amended) and the Cape Municipal Ordinance (Ordinance 20 of 1974) are applicable in Mdantsane, but that in terms of Regulation 3 of Chap. 1 of Proclamation R293, where two or more pieces of legislation may be applied in an R293 township, *the provisions of R293 shall take precedence over any conflicting provisions set by the other legislative instrument(s)*.
- With the abolishment of the Republic of Ciskei, administrative authority in terms of Proclamation R293 of 1962 (as amended) reverted to the National Department of Land Affairs. This authority was, however, delegated by the Minister of Land Affairs to the Premier of the Eastern Cape in a letter dated 24 November 1995.
- Subsequently, the East London TLC was appointed the Commissioner of the R293 "town" of Mdantsane per Proclamation 61 of 1995, issued on 28 November 1995.
- Information obtained indicates that the Potsdam Allotment Area (Potsdam) was administered by the Dept of Land Affairs & Agriculture in terms of the Agricultural Development Act (Act 14 of 1989, Ciskei).

With regards to the **Administrative** matters listed above, the following refers:

In view of the foregoing, it is concluded that the EL TLC should for the time being, administer the area of Mdantsane using the provisions of both Proclamation R293 of 1962 (as amended) and the Cape Municipal Ordinance (20 of 1974) but that where mutually applicable provisions of these two pieces of legislation conflict, the provisions of Proclamation R293 must take precedence.

In order to address the primacy of Proclamation R293 of 1962 (as amended) and the uncertainty regarding the administrative status of Potsdam, it is concluded that the EL TLC should approach the Eastern Cape Provincial MEC for Housing & Local Government to:

- Issue a Proclamation in terms of Section 10 of the Local Government Transition Act, No. 209 of 1993, as amended to either amend Proclamation 79 of 1994 which established the EL TLC, in appropriate respects, to give preference to those provisions of the Cape Municipal Ordinance (20 of 1974) which conflict with equivalent provisions of Proclamation R293 of 1962 (as amended); or amend or repeal those provisions of Proclamation R293 which are in conflict with equivalent provisions of the Cape Municipal Ordinance (20 of 1974)².

The full repeal of Proclamation R293 of 1962 (as amended) is not recommended under present circumstances as this legislation regulates land tenure rights applicable in Mdantsane.

- Further, to remove all uncertainty in the matter, issue in the same or a separate Proclamation made under Section 10 of the Local Government Transition Act, a Notice to provide that the area of Potsdam will be administered in terms of the Cape Municipal Ordinance (20 of 1974) which would apply to the exclusion of any other law dealing with local government matters in the area (by the repeal or amendment of such law); and provide that the area of application of the Cape Municipal Ordinance (20 of 1974) is amended to include the area of Potsdam.

2.0 TOWNSHIP ESTABLISHMENT

Urban settlement within Mdantsane consists of township areas as designated in terms of Proclamation R293 of 1962, as amended (Mdantsane Proper), and township areas in Golden Highway and Potsdam (Potsdam South Neighbourhood 1 and Potsdam East Neighbourhood 1) that were designated in terms of the (Ciskei) Land Use Regulation Act 15 of 1987.

In general terms, Mdantsane has been developed as an urban township without recourse to formal township establishment procedures as commonly practised in terms of prevailing planning legislation applicable in areas not situated in the former TBVC states or "Black Local Authority" areas administered in terms of the Black Communities Development Act (Act No. 4 of 1984).

In effect, whilst numerous General Plans describing the urban extent of Mdantsane have been approved over the years, no formal township establishment procedures were carried out and the Mdantsane urban area today still appears legally to comprise of the underlying parent properties, each with a separate Title Deed with individual title conditions applicable.

Situated on these underlying portions of land are \pm 30 000 individual sites (developed and un-developed), as described on various General Plans.

However, moves to rationalise this situation were initiated by the former Surveyor General of the Ciskei. Specifically, whilst no consolidation of underlying parent properties has been effected to date, an Outside Figure describing the township area of Mdantsane as Farm 1404 was approved and registered at the now defunct Ciskei SG's Office in February 1996. Additionally, small scale diagrams describing the outside figures of *proposed* Portions of Farm 1404 (i.e.. embryonic individual township areas of Mdantsane) was also prepared.

This information is reportedly held in digitised format by the TLC's Survey Branch and could serve as the first step in rationalising and effecting proper township establishment in Mdantsane, as well as, in the interim, facilitating the upgrading of land tenure rights.

3.0 LAND OWNERSHIP

3.1 LAND OWNERSHIP IN GENERAL

Available information, to date, indicates that Mdantsane is comprised of a consolidated Farm property, Farm 1404, which, in turn, comprises a number of underlying properties (at least 72 Farm Portions, not including the former Freehold township of Egerton, the legal status of which is presently unknown but which is presumed to have been cancelled when Mdantsane was first proclaimed and development initiated there). With the exceptions of the areas known as "Golden Highway, which is held under separate Freehold Title and which was established in terms of the (Ciskei) Land Use Regulation Act 15 of 1987 by private developers Time Housing, and Potsdam South Neighbourhood 1 which was developed by the Small Projects Foundation, all the underlying properties (i.e.. the "parent properties" of Farm 1404), are *presently owned by the Eastern Cape Province and should be regarded as State Land*.

With regard to the area of Potsdam, this appears to comprise of approximately seven (7) "parent" properties, located south of the Blaney-East London railway line. Again, with the exception of land held in private ownership in the township of Potsdam South Neighbourhood 1, all the land is state-owned.

Reportedly, the necessary certification and delegation of authority is in place to enable the Eastern Cape Province (Dept of Housing & Local Government) to effect transfer of the relevant state land to the East London TLC. This process is presently underway.

3.2 INDIVIDUAL LAND TENURE

With regard to the forms of individual land tenure prevailing in the study area the following applies:

- In terms of the land tenure provisions contained in Proclamation R293 of 1962 (as amended), two forms of individual tenure prevail in Mdantsane, namely Deed of Grant (in respect of so-called "R293 Ownership Units") and Leasehold (in respect of State-owned "R293 Letting Units"). The latter are in the process of being converted to Deed of Grant title in terms of the state's Housing Discount Benefit Scheme

- Freehold Title (or "full" ownership) is not possible under the regulations set by Proclamation R293 of 1962, as amended.

3.3 IMPLICATIONS WITH REGARD TO TOWNSHIP ESTABLISHMENT AND LAND OWNERSHIP

With regard to the question of upgrading of land tenure rights in Mdantsane the following points are noted:

- Given the nature of township establishment under Proclamation R293 and the subsequent provision for only proxy forms of ownership (Deeds of Grant), a need exists to contemplate means of rationalising the situation by setting in place a programme to upgrade land tenure rights and formalise township establishment (i.e.. consolidate underlying parent properties and frame small scale diagrams to describe discrete townships - refer Section 2.0 above).
- However, Messrs Hofmeyr have suggested that *no legal means are presently in place to effect the upgrading of land tenure rights* as their research has not revealed any extension of application of relevant legislation (the Upgrading of Land Tenure Rights Act 112 of 1991) to the former territory of the Ciskei.
- Therefore, and subject to further research on the matter, it appears as if there are no prescribed procedures in place in terms of which Deeds of Grant, PTO's and Leasehold Title in Mdantsane could be upgraded into full ownership, at present.
- It *would* be possible to initiate a programme of *proper township establishment* (in terms of either the Less Formal Townships Establishment Act, 113 of 1991 [as amended] or the Development Facilitation Act, 67 of 1995) in respect of existing township areas in Mdantsane, so as to reconcile and consolidate underlying parent properties and record the existing subdivisions as legal subdivisions of these parent properties in townships registers. Thereafter individual title to these existing erven could be carried over to the incumbent "owner". However, Hofmeyr note that *this is likely to be a complex, expensive and administratively cumbersome procedure*.

- In the light of the foregoing, it is anticipated that considerable difficulty is likely to be experienced in attempting to rationalise the situation regarding township establishment and land tenure in Mdantsane.
- The implications appear most noteworthy when applied to situations where the need exists to contemplate re-planning (as in parts of the Buffer Strip townships), where our information is that many (if not most) residents on formal sites in these areas have acquired Deeds of Grant to their sites.
- It is possible that the best means of testing the feasibility of achieving a rationalised land administration system and a land market based on freehold title in the study area would be to engage in a Pilot Project within a strategic area of Mdantsane, to establish the area as a "proper" township and to upgrade Deeds of Grant to full title.

4.0 CONCLUSION

In summarising the foregoing, the *following programme of actions is suggested*:

To ease the tasks involved in administration of Mdantsane, the EL TLC should approach the Eastern Cape Provincial MEC for Housing & Local Government to:

- Issue a Proclamation in terms of Section 10 of the Local Government Transition Act, No. 209 of 1993, as amended to **either** amend Proclamation 79 of 1994 which established the EL TLC, in appropriate respects, to give preference to those provisions of the Cape Municipal Ordinance (20 of 1974) which conflict with equivalent provisions of Proclamation R29 of 1962 (as amended); **or** amend or repeal those provisions of Proclamation R293 which are in conflict with equivalent provisions of the Cape Municipal Ordinance (20 of 1974).
- Furthermore, it is recommended that the same or a separate Proclamation made under Section 10 of the Local Government Transition Act be framed to provide that the area of Potsdam will be administered in terms of the Cape Municipal Ordinance (20 of 1974), which would apply to the exclusion of any other law dealing with local government matters in the area (by the repeal or amendment of such law); and provide that the area of application of the Cape Municipal Ordinance (20 of 1974) is amended to include the(se) area(s) of Potsdam.

A suggested **Second step** would comprise an integrated set of actions aimed at:

- motivating to the Eastern Cape Provincial Government that it should, as a *matter of urgency*, either introduce (or request the National Government to introduce) legislation dealing specifically with the upgrading of lesser titles in **certain areas** previously included in the former Ciskei; or
- Initiate a Pilot Project which would test the feasibility of undertaking "proper" township establishment and associated land tenure upgrading for all the R293 components of its jurisdiction;

- set in place, or reconstruct from available records, a record of all surveyed sites in Mdantsane and their registered owners:- such records could be sourced from the Mdantsane Town Manager's office (legally now part of the TLC's administration) and the King William's Town Deeds Registry.

Finally, it is noted in the above regard that the enactment of the Development Facilitation Act (Act 67 of 1995) could, when implemented, be of considerable use to the TLC in resolving many of the issues related to the multiplicity of applicable legislation in its area of jurisdiction, as well as facilitating (as per its title) proper township establishment for future development areas in Mdantsane and Potsdam.