

INSTITUTIONAL LAND POLICY

As approved in terms of Council Resolution 224/07/2018

CITY OF WINDHOEK

Authored by: Property Management Division

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1. Objective

The objective of the Institutional Land Policy is to provide guidelines for the sale of institutional land and sports grounds which are alienated to prospective purchasers at subsidized purchase price. Such subsidies are part of Council's Grant Policy which is both in the best interest of the City and the communities. The Policy's objective is to uplift communities by addressing their social needs, granting favourably circumstances and rebates in acquiring land at affordable rates to advance their noble causes.

2 Windhoek Town Planning Scheme (Table B)

In terms of the Windhoek Town Planning Scheme "institutional" and "private open space" land uses are as follow.

Use zone	Primary uses	Consent use	Prohibited uses
Institutional	Places of instruction, social halls and places of public worship	Institutions, special buildings, shops, industrial buildings and business buildings	Other uses not under columns 2 and 3
Private Open Space	Private open space, social hall, gymnasium, the provision of food and drink to club members and bona fide guests of club members (guests are taken to include visiting sports teams and sports players and bona fide spectators).	Other uses not under columns 2 and 4, as long as they remain secondary and subordinate to the primary uses	Noxious industrial buildings

3. Definitions

Term	Definition
Place of instruction	Means a building designed and/or used for educational and cultural purposes, administrative activities related therewith, and board and lodging.
Social hall	Means a building designed and/or used for social meetings, gatherings and recreation and includes a non-residential club but does not include a "place of amusement".
Place of public worship	Means a building, designed and/or used as a place of public devotion and related administrative activities but excluding a funeral chapel and includes other

	buildings designed for social gathering or recreation which are associated with and on the same site as the place of public worship.”
Constitution	A composition of fundamental principles by which a body or institution is established and governed, stating the following: <ul style="list-style-type: none"> • Institution is a legal person. • Institution is a non-profitable organisation. • Institution has the power to acquire or lease immovable property. • Indication of what will happen to the property in case of dissolution of the organisation/ institution

4. Categories of land becoming available

Institutional/sport or recreational ground that becomes available could be categorized as follows:

- 4.1 Individual registered “institutional” or “undetermined” zoned erven that are identified by an institution or organization and became available. After investigation the property can be sold to such an applicant, as they initiated the sale.
- 4.2 Council could initiate an investigation to identify land that could be used for institutional, sport or recreational purposes.
- 4.3 Erven could also become available through cancellation via credit control procedures or via the standard reverting clause.
- 4.4 “Institutional” or “Private Open Space” zoned Erven that are created in new townships for sale by Council.

5. Qualification requirements for subsidy

The following principles should be applied, to determine if an applicant qualifies for a subsidised purchase price:

- 5.1 Only institutions, which are a legal person and non-profit making, will qualify for subsidized purchase prices.
 - 5.1.1 Proof of the above will be the constitution as defined in paragraph 3 above.
- 5.2 Qualification for a subsidy will also depend on the submission of the documents required as indicated under the various types of institutions.

6. Required Documents for various types of institutions

The following documents mentioned below are required for various types of institutions and should be submitted to the City prior to any commencement of technical investigations of the application for land for such an institution.

6.1 Welfare organization

In the case where the applicant is a **welfare organization** the following information should be submitted:

- 6.1.2 A constitution of the institution
- 6.1.3 A certified copy of the Registration Certificate stating the Welfare Organization (WO) number from the Ministry of Home Affairs/Health and Social Services where in the case of a welfare organization.
- 6.1.4 Power of Attorney granted by the institution to a particular person/s that he/she/they have the authority to sign on behalf of the institution.
- 6.1.5 Copy of Financial statements in case of already established institution; and or proof of financing from a financial institution or donor will suffice.
- 6.1.6 Information regarding all immovable property in the municipal area of Windhoek in possession of the applicant with indications for what it is used, whether it is improved or not and whether the facilities are shared with other organizations/institutions.

6.2 Crèche

In the case where the applicant is a **crèche** the following information should be submitted:

- 6.2.1 A signed constitution.
- 6.2.2 A certified copy of the Registration Certificate at the Ministry of Gender, Equality and Child Welfare under the Early Childhood Development Program.
- 6.2.3 A certified copy of a fitness certificate from the City of Windhoek.
- 6.2.4 A letter indicating the Power of Attorney granted by the institution to a particular person/s that he/she/they has the authority to sign on behalf of the institution.
- 6.2.5 Copy of Financial statements in case of already established institution; and or proof of financing from a financial institution or donor will suffice.
- 6.2.6 Information regarding all immovable property in the municipal area of Windhoek in possession of the applicant with indications for what it is used, whether it is improved or not and whether the facilities are shared with other organizations/institutions.

6.3 School or College

In the case where the applicant is a **school or college** the following information should be submitted:

- 6.3.1 A signed constitution
- 6.3.2 A certified copy of the Registration Certificate from the Ministry of Education, Arts and Culture where the applicant is a Primary or Secondary School.
- 6.3.3 A certified copy of the Registration Certificate from the Ministry of Higher Education, Training and Innovation where the applicant is a College, University or Vocational Training Provider.
- 6.3.4 A certified copy indicating that a primary or secondary school's syllabus is recognized by the Ministry of Education, Arts and Culture
- 6.3.5 A certified copy indicating that the college, university or training provider is recognized by the Namibia Training Authority (NTA)/Namibia Qualification Authority (NQA).
- 6.3.6 A Power of Attorney granted by the institution to a particular person/s that he/she/they has the authority to sign on behalf of the institution.
- 6.3.7 Copy of Financial statements in case of already established institution; and or proof of financing from a financial institution or donor will suffice.
- 6.3.8 Information regarding all immovable property in the municipal area of Windhoek in possession of the applicant with indications for what it is used, whether it is improved or not and whether the facilities are shared with other organizations/institutions.

6.4 Sport and Recreational clubs

In the case where the applicants are **sport and recreational clubs** the following information should be submitted:

- 6.4.1 A signed constitution
- 6.4.2 Proof of affiliation with the National Sports Commission or any other relevant controlling body.
- 6.4.3 A Power of Attorney granted by the institution to a particular person/s that he/she/they has the authority to sign on behalf of the institution.
- 6.4.4 Copy of Financial statements in case of already established institution; and or proof of financing from a financial institution or donor will suffice.
- 6.4.5 Information regarding all immovable property in the municipal area of Windhoek in possession of the applicant with indications for what it is used, whether it is improved or not and whether the facilities are shared with other organizations/institutions.

6.5 Places of Worship

Where the applicant is a *place of worship*, the following information should be submitted:

- 6.5.1 A signed constitution of the institution.
- 6.5.2 Proof of a governing council, a synodical commission or a similar governing body within Namibia with which the place of worship affiliates.
- 6.5.3 In case of foreign pastors and/or priests being the Founding or Senior Pastor or Priest, submit a working permit.
- 6.5.4 A Power of Attorney granted by the institution to a particular person/s that he/she/they has the authority to sign on behalf of the institution.
- 6.5.5 Copy of Financial statements in case of already established institution; and or proof of financing from a financial institution or donor will suffice if newly established.
- 6.5.6 Information regarding all immovable property in the municipal area of Windhoek in possession of the applicant with indications for what it is used, whether it is improved or not and whether the facilities are shared with other congregations.

It should be noted that it is accepted that for every 500 dwellings one institutional zoned site for religious purposes be sold.

6.6 Regional Council, Constituencies and Government Ministries

Regional Council and Constituencies should apply through the Khomas Regional Council and Government Ministries should apply through the relevant Ministry.

6.7 Traditional Authorities

Where the applicant is a **Traditional Authority**, the following information should be submitted.

- 6.7.1 Proof of registration under the Traditional Authorities Act 17 of 1995.
- 6.7.2 Proof that the organization is in existence for one year.
- 6.7.3 A Power of Attorney granted by the institution to a particular person/s that he/she/they has the authority to sign on behalf of the institution.
- 6.7.4 Copy of Financial statements in case of already established institution; and or proof of financing from a financial institution or donor will suffice.
- 6.7.5 Information regarding all immovable property in the municipal area of Windhoek in possession of the applicant with indications for what it is used, whether it is improved or not and whether the facilities are shared with other organizations/institutions.

7. General rules for all applicants

- 7.1 No applications should be investigated unless all the above information pertaining to the applicant has been submitted.

- 7.2 The applicant notes that a period of thirty (30) days will be given to submit all the required documents.
- 7.3 The applicant should further note that no extension will be granted for the submission of such documentation.
- 7.5 Where the applicant is a place of worship, crèche or welfare organization applications for Erven bigger than 3,000 m² should be substantially motivated in terms of financial ability to develop and the submission of development plans.
- 7.6 Note that Council will not allocate more than two properties in the whole of Windhoek per institution.
- 8 Purchase price
- 8.1 All institutional land and private open spaces are sold at a subsidized purchase price upon submission of the required documents, unless Council resolves otherwise.
- 8.2 The prices should be revised on a yearly basis.

9 In case of partial development

In terms of the Deed of Sale, the purchaser binds him-, her-, itself to erect a building or buildings on the property not later than 5 (**five**) years from date of sale. This condition shall be incorporated at all times in the Deed of Sale whenever institutional land is sold.

If the institution fails to develop the additional facilities with regard to properties larger than 3,000 m² as indicated in their motivation within 5 years from the date of sale, the portion not developed shall be subdivided, surveyed and transferred back to Council on the expense of the purchaser.”

10. Subdivision and Rezoning

It should be noted that a only a consent use with a ratio of 70:30, is allowed for use for commercial activities. This however, shall still be subject to the Windhoek Town Planning Scheme.

11. Securing land for institutional uses other than places of worship

To ensure that after the reservation of institutional land for school purposes the remaining institutional land is equally distributed between the different uses it is accepted that for every 500 dwellings one institutional zoned site for religious purposes be sold and all the other institutional sites in that vicinity of the 500 dwellings be reserved for other institutional uses, for example, crèches, clinics, welfare organizations, etc.

12. Reverting clause

A reverting clause which reads as follows will be registered against the Deed of Transfer of all land sold at a subsidized price.

12.1 NOTARIAL REGISTRATION

- 12.1.1 Subject to the provisions of this Agreement, the PURCHASER notes that it shall not be entitled to cede, assign or in any other manner make over its rights, title and interest in this Agreement or any of its liabilities, responsibilities, duties or obligations hereunder, to any other third party, without the prior written consent of the SELLER, which consent shall not be unreasonably withheld: Provided that the PURCHASER and/or approved its successor-in-title and/or successors-in-name and/or in shareholding and/or members or assigns, (whichever may be applicable), duly complied or guaranteed compliance with all conditions under this Agreement as well as with the conditions to be registered notarially in favour of the SELLER. The restrictive resale condition provided for in this clause shall not restrict the rights of the bank, or other financial institution in whose favour a the mortgage bond has been registered in the event that the mortgagee has to call up the mortgage bond or to sell the Property in execution in order to recover monies owing to it thereunder.
- 12.1.2 The PURCHASER and/or its approved successor-in-title or successors-in-name or in shareholding or membership and/or its assigns, (whichever may be applicable, agree to the registration against the Title Deed of the PROPERTY, of the following conditions imposed for the benefit of and enforceable by the SELLER, or its assigns, namely:
- 12.1.2.1 The PROPERTY shall revert to the SELLER in the event of the PURCHASER and/or approved its successor-in-title and/or successors-in-name and/or in shareholding and/or members or assigns, (whichever may be applicable), not complying with the following conditions:
- 12.1.2.1.1 If the PURCHASER and/or approved its successor-in-title and/or successors-in-name and/or in shareholding and/or members or assigns, (whichever may be applicable), fail to develop and erect within **five years** from date of sale improvements on the PROPERTY (not including outbuildings) to the value **equal to** the municipal valuation of the PROPERTY as determined by the Strategic Executive: Housing, Property Management and Human Settlement from time to time, then
- (i) the PURCHASER and/or approved its successor-in-title and/or successors-in-name and/or in shareholding and/or members or assigns, (whichever may be applicable), shall retransfer the PROPERTY to the SELLER at the PURCHASER's and/or approved its successor's-in-title and/or successors'-in-name and/or in shareholding' and/or members' or assigns' s, (whichever may be applicable) cost, and the SELLER shall not be liable to pay the PURCHASER and/or approved its successor-in-title and/or successors-in-name and/or in shareholding and/or members or assigns, (whichever may be applicable), any compensation for the improvements on the PROPERTY;
- or alternatively, to the choice of the SELLER,
- (ii) the PURCHASER and/or approved its successor-in-title and/or successors-in-name and/or in shareholding and/or members or assigns, (whichever may be applicable), shall pay the SELLER within thirty days from having been requested to do so, the difference between the purchase price as set out in clause 2 and the market valuation of the

unimproved property based on the highest land use of the PROPERTY on date the reverting clause shall apply.

- 12.2 The PURCHASER and/or approved its successor-in-title and/or successors-in-name and/or in shareholding and/or members or assigns, (whichever may be applicable), shall not use the PROPERTY for any other purpose than for which it was bought or sell, sublease or donate the PROPERTY without the consent of the SELLER, for a period of 30 (thirty) years from date of sale. Should the SELLER at its sole option consent to a different use or the sale, sublease or donation of the PROPERTY to a third party, the PURCHASER and/or approved its successor-in-title and/or successors-in-name and/or in shareholding and/or members or assigns, (whichever may be applicable), undertakes to pay to the SELLER the difference between the purchase price set out in clause 2 and the market valuation of the unimproved property based on the highest land use of the PROPERTY or portion thereof, on date of approval of the different use or the sale, lease or donation to a third party.
- 12.3 The PURCHASER undertakes to effect at its own cost the registration of the conditions contained in clauses 19.6 by way of a Notarial Deed of Imposition of Conditions against the Title Deed of the PROPERTY, the wording of such Notarial Deed to be determined by the Notary of the SELLER to reflect the intention of the PURCHASER or its successor-in-title or its assigns and SELLER contained in the said clauses.”

13. Requirements for Institutional Land

- 1 That all previous Council Resolutions for the sale and lease of Institutional land are rescinded and replaced with the amended policy.
- 2 That the following requirements be approved as part of the Institutional Land Policy:
- 2.1 That Institutional entities or organizations that buys business zoned Erven buys them at the full purchase price through the tender process and that no preference be given as business zoned Erven are sold on tender.
- 2.2 That the applicant institution/organization be operational for at least one year before applying for institutional land.
- 2.3 That all applications for extension for the finalization of Deed of Sale in respect of Institutional land be given a time period of ninety (90) days only, where after no further extension be granted.
- 2.4 That only a maximum of two years extension of development period be granted to applicants that failed to develop such properties in the stipulated time frame.
- 3 That applicants take note that no applications for rezoning on ‘institutional’ land be allowed, provided:
- 3.1 That only a consent use with a ratio of 70:30 be allowed and in terms of the Windhoek Town Planning Scheme, the 30 % consent use will only be applied for land uses such as institutions, special buildings, shops, industrial buildings and business buildings.

- 4 That it be noted that subsidized price will only be applicable to nonprofit making organisations, and that State Owned Enterprises do not qualify to purchase land at subsidized prices and that they will not be allowed to use institutional land, unless land is utilized for institutional purposes.
- 5 That it be noted that Constituencies and Government Ministries or agencies who apply in their own capacity must submit their applications through the Regional Council and/or line Ministries be submitted through the relevant channels before the City can consider their applications.
- 6 That Council takes note that there is no Law that requires that a place of worship be registered with a Governing Body such as the Council for Churches in Namibia or any other recognized body.
- 6.1 That Council nevertheless requires Places of worship to submit proof of a governing council, a synodical commission or a similar governing body within Namibia with which the places of worship affiliates.
- 7 That all institutional land be sold at a subsidized purchase *price* only for institutional and sports or recreational usage.
- 8 That these prices be revised on a yearly basis.(Inflationary)
- 9 That all institutional zoned land, to be sold to welfare organizations, places of worship, crèches, colleges and private schools or any other institutions only be sold only in cash, cash or through bank guarantee.
- 10 That places of worship and religious organisations be encouraged to apply for land for crèches and after school Day Care Centres to help government with Early Childhood Development
- 11 That when applications for institutional land for lease is received, the following be applicable:
 - 11.1 That institutional land only be leased to institutions who met the requirements of the Institutional Land Policy but who cannot afford to pay cash.
 - 11.3 That an ‘institutional’ zoned erf or portion of land only be leased at a full and market related purchase price for a period of five (5) years.
 - 11.4 That should the lease be cancelled for whatever reason, all the permanent structures on the property revert to Council.
 - 11.5 That should an institution leasing an institutional Erf not be able to purchase the property within 5 years of lease that the lease be cancelled, after a notice as indicated in Paragraph 11.6 bellow.
 - 11.6 That a six (6) month cancellation notice period be incorporated into the Deed of Lease.
 - 11.7 That no renewal of lease be considered, unless fully motivated to Management Committee.

- 12 That all the applications received for institutional land, that the applicants be informed of the new policy and that they all adhere to the new requirements before their applications are submitted to Council for considerations.
- 12.1 When institutional land is to be leased, the following shall be applicable:
- 12.1.2 The Lessee shall develop the erf within a period of two (2) years from the date of signing the Deed of Lease.
- 12.1.3 Non-compliance to paragraph 12.1.2 above shall result in the lease being cancelled.
- 12.1.4 Should the lease be cancelled, for whatever reason, the erf with all the permanent structures will revert to Council. .
- 12.1.6 No renewal of lease will be considered, unless fully motivated to Management Committee.

ADDOPTED IN TERMS OF COUNCIL RESOLUTION: 224/07/2018

[Municipal Council Minutes: 2018-07-26]

9.4.2 GOV.2 [HPH] SUBMISSION OF REVISED INSTITUTIONAL LAND POLICY (L/Institutional Land Policy)

On proposal by Councillor MJ Amadhila, it was

RESOLVED

- 1 That all previous Council Resolutions for the sale and lease of institutional land be rescinded and replaced with the amended Institutional Land Policy, attached as pages 1064 - 1075 to the agenda.
- 2 That the Institutional Land Policy as per paragraph 1 above, be noted, adopted and that it be applicable to all future applications dealing with the purchase and lease of 'institutional' zoned land for institutional purposes.
- 3 That the Moratorium placed on the sale of institutional land to places of worship be lifted.
- 4 That the following be approved and made part of the Institutional Land Policy:
 - 4.1 That institutional entities or organisations that buy 'business' zoned erven, buy them at the full purchase price through the tender process and that no preference be given as all 'business' zoned erven are sold on tender.
 - 4.2 That all applications for extension for the finalisation of their respective Deed of Sale be given a time period of ninety (90) days only, whereafter no further extensions be granted.
 - 4.3 That only a maximum of two (2) years extension of the development period be granted to applicants that failed to develop such properties in the stipulated period.
- 5 That the institution/organisation be operational for at least one (1) year before applying for institutional land.
- 6 That applicants take note that no applications for rezoning on 'institutional' zoned land be allowed: Provided:
 - 6.1 That only a consent to use with a ratio of 70:30 be allowed, of the 30 % of such land for other usage can be supported on formal written application and subject to consideration by Council.
 - 6.2 That where such consent is granted, the applicant(s) will forfeit any exemption on rates and taxes and will be taxed according to the consent use for the entire property where such consent is granted.
- 7 That it be noted that a subsidised price will only be applicable to non-profit making organisations, and that Government owned enterprises do not qualify to purchase institutional land at subsidised prices and that they not be allowed to use 'institutional' zoned land, unless the land is utilised for institutional purposes.

- 8 That it be noted that Constituencies and Government Ministries or agencies who apply in their own capacity must submit their applications through the Regional Council and/or line Ministries and Constituency offices, and be submitted through the relevant channels before the City can consider their applications.
- 9 That Council nevertheless require places of worship to submit proof of a Governing Council, a Synodical Commission or a similar Governing Body in Namibia with which the place of worship affiliate.
- 10 That all institutional land be sold at a subsidised purchase price only for institutional and sport or recreational usage.
 - 10.1 That these prices be revised on a yearly basis.
 - 10.2 That all 'institutional' zoned land, to be sold to welfare organisations, place of worship, crèches, colleges and private schools only be cash or through a Bank Guarantee.
- 11 That places of worship and religious organisations be encouraged to apply for land for crèches and after school day care centres to help the Government with early childhood development.
- 12 That when applications for institutional land for lease are received, the following be applicable:
 - 12.1 That institutional land only be leased to institutions who have met the requirements of the Institutional Land Policy but who cannot afford to pay cash.
 - 12.2 That an 'institutional' zoned erf or portion of land only be leased at a full market related price for a period of five (5) years.
 - 12.2.1 That should the lease be cancelled for whatever reason, all the permanent structures on the property revert to Council.
 - 12.3 That should an institution leasing an institutional erf not be able to purchase the property within five (5) years of lease that the lease be cancelled, after a notice as indicated in paragraph 11.4.
 - 12.4 That a six (6) month cancellation notice period be incorporated into the Deed of Lease.
 - 12.5 That the rental paid not be set off against the purchase price.
- 13 That the Institutional Land Policy not have a retrospective application on applications received prior to its enactment.
- 14 That for all the applications received for institutional land, the applicants be informed of the new Institutional Land Policy and that they should all adhere to the new requirements before their applications are submitted to Council for considerations.
- 15 That the resolution be implemented prior to confirmation of the minutes.

RESOLUTION 224/07/2018
