

**BOARD NOTICE 90 OF 2020****REMOVAL OF RESTRICTIONS APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (ACT 16 OF 2013) : ERF 48, KINI BAY**

I refer to previous correspondence in this regard and wish to advise that, by resolution of full Council at its meeting held on 16 July 2015 and in terms of Section 42 read with Section 47 of the Spatial Planning and Land Use Management Act 16 of 2013, the Municipal Planning Tribunal on 20 March 2020 resolved as follows:

That the restrictive Title Deed Conditions 5 and 6(a), (b) and (b)[i and ii] as contained in Deed of Transfer No. T27733/1971 and any subsequent Deed applicable to Erf 48, Kini Bay **BE REMOVED**, subject to:

- (i) compliance with the requirements of the Registrar of Deeds;
- (ii) the provisions of applicable zoning scheme regulations applying;
- (iii) compliance with the provisions of National Building Regulations.

When considering this proposal the Municipal Planning Tribunal noted the following:

Zoning and Character

Erf 48, Kini Bay is zoned Residential 1 purposes. The application is for the Removal of Title Deed Restrictions in terms of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA).

In terms of the Section 8 Scheme regulations applicable to Residential 1 zoned property, the following land use rights and development parameters apply:

Use Zone	Primary Uses	Secondary Uses	Prohibited Uses	Parameters
Residential 1	Dwelling Houses	Places of Public Worship Places of Public Assembly Places of Instruction Institutions Special Uses Guest Houses [Introduced TPA 1106 (Amended 3) 2.10.92)	Uses other than those mentioned In columns 2 and 3	Street building line 5m erven > 500m <sup>2</sup> Side and rear spaces – 1.5m Coverage – 50% Minimum erf size 600m <sup>2</sup>

The subject property is situated within an area that is characterised by low density residential developments. The surrounding properties are predominantly zoned Residential 1 which permits single dwellings, the area also has Institution uses which is part of a residential area.

Title Deed Conditions

- "5 No building on this erf shall be used or converted to use for any purpose other than that permitted in terms of these conditions.
- 6(a) This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator may, from time to time after reference to the Townships Board and the local authority, approve, provided that if the erf is included within, the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the scheme subject to the conditions and restrictions stipulated by the scheme.
- (b) No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, nor within 3,3 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority:
- (i) any outbuilding used solely for the housing of motor vehicles and not exceeding 3,05 metres in height, measured from the ground floor of the outbuilding to the wall-plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for a distance of 13,02 metres measured from the rear boundary of the erf provided that in the case of a corner erf the distance of 11,02 metres shall be measured from the point furthest from the streets abutting the erf,
- (ii) any outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."

Conditions in the Title Deed are no longer required as town planning tools because they have been replaced by formal and structural town planning schemes and policies. Any development on the subject property is therefore subject to comply or to be in line with the provisions of the Section 8 Zoning Scheme regulations. The Section 8 Zoning Scheme regulations provides adequate building or development parameters for the subject property to ensure maintenance of the character of the surrounding area. The restrictions currently prohibit the full utilization of the property in terms of the intrinsic use rights applicable as indicated in the table above.

Metropolitan Spatial Development Framework

There is no Local Spatial Development Framework available for the area of Kiny Bay. In the absence of an LSDF plan that envisions the desired spatial form for the area, the proposal must be assessed to see whether it is in line with the Metropolitan Spatial Development Framework (MSDF). The overall development vision for the municipality in terms of the MSDF is to "by 2030, turn Nelson Mandela Bay into a Metropole that is socially and economically inclusive, an environmentally sustainable city, with integrated human settlements- a place of opportunities where people can live, study and participate in the growth of the city."

In order for the above spatial vision to be realised, the MSDF provides strategic guidance for the spatial restructuring of the metropolitan area and makes development proposals and strategies intended to achieve spatial development objectives. These initiatives must promote, amongst others, efficient land development, urban growth, densification and contain urban growth. The MSDF does not mention any proposed interventions for Kiny Bay.

Rural Management Policy November 2009

The subject property falls within the urban edge, under the Coastal Villages which is characterised by low density residential development. The objectives of the policy are to maintain the character of the areas identified under Coastal villages and improving development standards. The proposed removal of restriction for the subject property does not negatively affect the set out objectives of the area by the policy.

Spatial Planning and Land Use Management Act No. 16 of 2013 (SPLUMA) Principles

The proposal at hand was advertised as required by SPLUMA. It should be noted that the proposal is assessed against SPLUMA development principles as required by Chapter 2 of the aforementioned Act. The SPLUMA development principles were considered as follows:

Spatial Justice: This principle deals with readdressing spatial imbalances by ensuring equitable access to and use of land. It should be noted that this principle has no bearing to the application at hand.

Spatial Sustainability: This principle deals with the promotion of land development in strategic location, protecting the environment, stimulation of land markets and viable communities. The application at hand is considered in line with the fundamental objectives of the aforesaid SPLUMA principle. Subsection (iv) of Spatial Sustainability advocates for promotion and stimulation of equitable functional of land markets. It is viewed that the removal of the Title Deed restrictive conditions will enable optimal utilisation of the property to its full development potential.

**Efficiency:** This principle promotes for optimisation of resource, minimisation of impact and sufficiency of land development application. Subsection (i) of this principle calls for land development that optimises the use of the existing resources and infrastructure. Effectively, the application to remove land use and development parameters related conditions will enable the property to be utilised to its full potential. Any improvements or modification on the property as a result of the subject application will utilise the existing engineering services such as sewer connections, water, electricity etc.

**Spatial Resilience:** This principle promotes for flexibility of spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities that are most likely to suffer from environmental and economic shocks. It should be noted that the imposed Title Deed Restrictive conditions limits the developmental flexibility afforded by the applicable zoning scheme. In light of the above, the removal of Title Deed Restrictive conditions will enable the applicant or the owner of the subject property to exercise less rigid development parameters as per the applicable zoning scheme.

**Good Administration:** Subsection (i) of this principle calls for an integrated approach to land use and development. The processing and advertising of this application has given effect to pronouncements of this principle where all relevant stakeholders have been actively engaged and notified of this application for their comments and inputs.

Your attention is also drawn to the provisions of Section 43 of the Spatial Planning and Land Use Management Act in respect of the lapsing of applications.

Furthermore, your attention is also drawn to the provisions of Section 51 of the Spatial Planning and Land Use Management Act in terms of which a right of appeal exists. Should you wish to exercise your right in terms hereof, such an appeal, accompanied by a cheque in the amount of R3150,00 in favour of the Nelson Mandela Bay Municipality, must be directed to the Office of the City Manager (c/o Ms Q Mlambo - qmlambu@mandelametro.gov.za), Nelson Mandela Bay Municipality, P O Box 9, Port Elizabeth, 6000 within 21 days of the date of notification of the decision. (please refer to the attached Appeal Application Form)

In terms of the above Act, you are required to arrange for the publication of the notice of approval in the Provincial Gazette: Eastern Cape. Kindly therefore email your draft notice to [info.egazette@gpw.gov.za](mailto:info.egazette@gpw.gov.za) in order to obtain a quote, application form and the bank details from the Government Printer. Please also note that the notice together with the proof of payment and the completed form should be emailed to [submit.egazette@gpw.gov.za](mailto:submit.egazette@gpw.gov.za) for the Publication Department to place the notice in the Provincial Gazette.

Kindly arrange for the endorsement of your Title Deed with the Registrar of Deeds, King William's Town to ensure that the conditions/clause are/is removed once the notice has been published in the Provincial Gazette: Eastern Cape.

Below is an example of the Provincial Gazette Notice:

**Nelson Mandela Bay Municipality (EASTERN CAPE)**

**Removal of Restrictions in terms of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)**

**ERF 48, Kini Bay, Measuring, Nine Hundred and Nine (909) square meters, PORT ELIZABETH, EASTERN CAPE**

Under Section 47 of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) and upon instructions by the Local Authority, a notice is hereby given that condition/s 5 and 6(a), (b) and (b)[i and ii] in Deed of Transfer No. T27733/1971 applicable to Erf 48, Kini Bay is/are hereby removed.

Yours faithfully



**ACTING SENIOR DIRECTOR: LAND PLANNING AND MANAGEMENT**

48-Barnard-MPT-MBana/LdV