



URBAN & REGIONAL PLANNING  
PROPERTY DEVELOPMENT SPECIALISTS

# MOTIVATIONAL MEMORANDUM: Removal of Restrictive Conditions Application for Erf 168 Fairmount Ext 2

on behalf of  
**Shimon and Mandy Batya Perez**

<b>Date</b>	19 January 2022	
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## INTRODUCTION

The purpose of this memorandum is to introduce, elaborate upon and motivate the application for removal of restrictive title conditions in respect of Erf 168 Fairmount Extension 2.

### 1. GENERAL INFORMATION

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KiPD (Pty) Ltd, the authorised agent, has been appointed by Shimon and Mandy Bayta Perez, the registered owners of Erf 168 Fairmount Extension 2, to lodge an application to remove restrictive title conditions from the title deed. Erf 168 Fairmount Extension 2 will be referred to as "the site", "the subject properties" and/or "the proposed development" in this memorandum.

#### 1.1. THE APPLICATION

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Application is made in terms of Section 41 of the City of Johannesburg Metropolitan Municipality Municipal Planning By Laws, 2016, read together with the Spatial Planning and Land Use Management Act (Act 16 of 2013).

Application is made to remove conditions A.(a) up to and including A.(m). from Title Deed T47250/2017.

#### 1.2. LAND DEVELOPMENT AREA

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##### 1.2.1. Site Locality

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Fairmount is located in the north eastern suburbs of Johannesburg, adjacent to the Ekurhuleni boundary. Erf 168 Fairmount Extension 2 is located at 61 Bradfield Drive, Fairmount and measures 991 m<sup>2</sup>.

#### 1.3. AGENT AND CLIENT

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##### 1.3.1. Agent

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The authorised town planning agent acting on behalf of the client is:

Name	KiPD (Pty) Ltd
Responsible Persons	Saskia Cole
Postal Address	P O Box 52287, Saxonwold, 2132
Contact Number	011 888 8685 / 082 574 9318
Email	saskia@kipd.co.za

### 1.3.2. Client

The client's contact details are as follows:

Contact name	Shimon Perez
Contact Number	074 261 6061
Email	sales@decorhandles.co.za
Postal address of land owner :	61 Bradfield Drive, Fairmount

## 1.4. LEGAL ASPECTS

### 1.4.1. Ownership

Erf 168 Fairmount Extension 2, held under Deed of Transfer T47250/2017, is owned by Shimon and Mandy Batya Perez

### 1.4.2. Size

The property measures 991 m<sup>2</sup>.

### 1.4.3. Power of Attorney

The owners of the property have provided a formal signed Special Power of Attorney to enable KiPD to make application on the subject property as per the requirements of the Municipal Planning By Law, 2016 read together with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013).

### 1.4.4. Registered Bonds

There is no registered bond held against the property.

## 1.5. EXISTING LAND USE

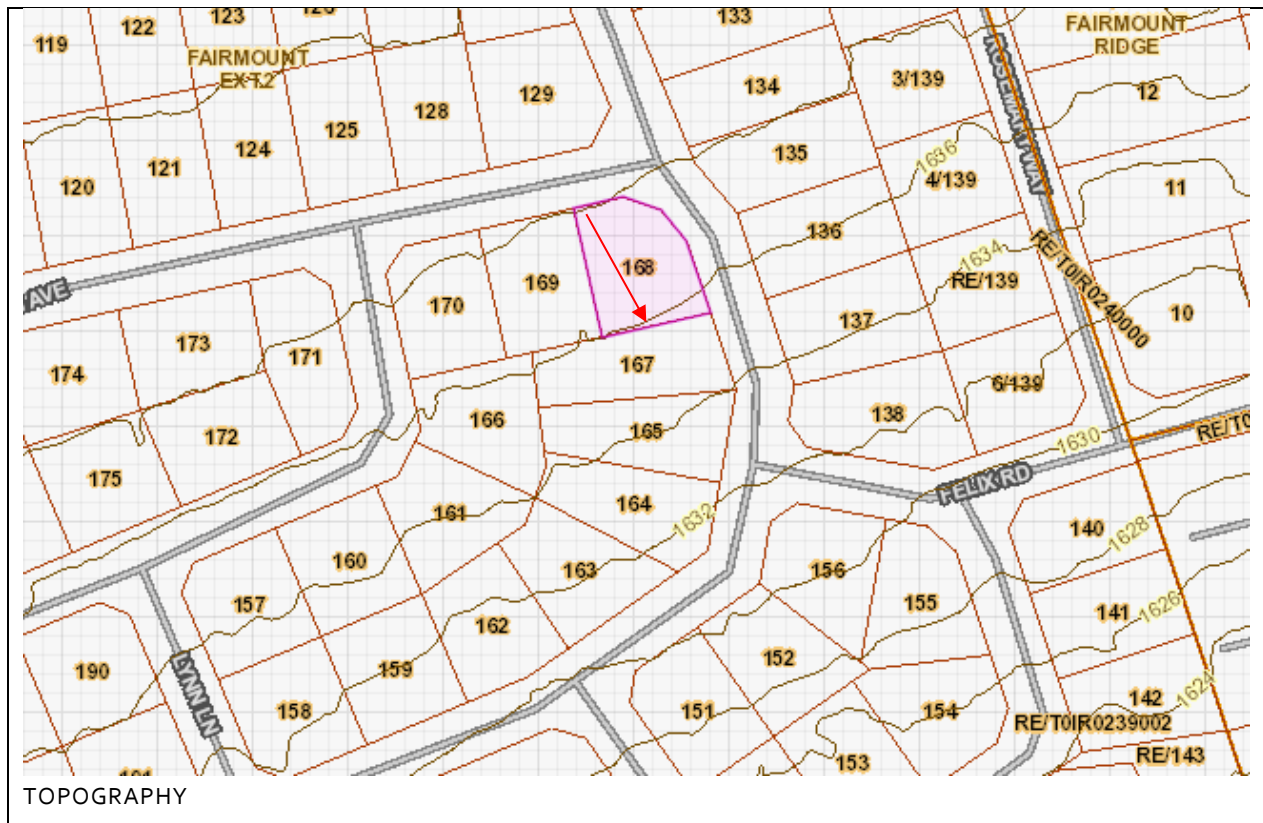
The site is currently being used as a single residential dwelling house.

## 1.6. SURROUNDING LAND USE

The property is mainly surrounded by residential dwelling houses.

## 1.7. TOPOGRAPHY

The slope of the site falls from the north to south. The slope is extremely gentle as can be seen on the contour map below. The land slopes approximately 2m over the entire extent of the property.



### 1.8. EXISTING ZONING AND DEVELOPMENT CONTROLS

In terms of the City of Johannesburg Land Use Scheme, 2018, the property is currently zoned as follows:

Zoning	Residential 1
Primary rights	Dwelling house
Secondary Rights	Religious purposes, place of instruction, child care centre, social halls, institutions, residential buildings (excluding hotels), special buildings, sport and recreation clubs, public or private parking areas, medical consulting rooms, tavern/shebeen, guest house.
Floor Area	As per scheme – 1.2
Coverage	As per Scheme - 50%
Height	As per scheme - 3 storeys
Building lines	As per scheme – 3m street boundaries
Parking	As per scheme

### 1.9. SURROUNDING ZONING

(Annexure C : Surrounding zoning)

In terms of the City of Johannesburg Land Use Scheme, 2018, the erven in Fairmount Ext 2 are mainly zoned "Residential 1".

## 2. THE APPLICATION

### 2.1. REMOVAL OF RESTRICTIVE CONDITIONS

Application is hereby made to remove the following conditions to be removed from Title Deed T47/250/2017:

Number	Condition	Reason for removal
A.(a)	The Applicant and any other person or body of persons so authorised by the Administrator shall, for the purpose of securing the enforcement of these conditions any other conditions referred to in section Fifty Six bis of Ordinance No. 11 of 1031 have the right and power at all reasonable times or inquiry as may be necessary to be made for the abovementioned purpose.	The "Applicant", the company, Fairmount Extension Estates (Pty) Ltd has been deregistered, the defacto township owner is the City of Johannesburg.
A.(b)	Plans and specifications of all buildings and of all alterations or additions thereto shall be submitted to the local authority whose approval, in writing shall be obtained before the commencement of building operations. All buildings or alteration or additions thereto shall be completed within a reasonable time after commencement.	Administrated by the Local Authority in terms of the National Building Regulations.
A.(c)	The elevational treatment of all buildings shall conform to good architecture so as not to interfere with the amenities of the neighbourhood.	Regulated by the Local Authority
A.(d)	Neither the owner not any other person shall have the right save and except to prepare the erf for buildings purposes, to excavate therefrom any material without written consent from the local authority.	Regulated by the CoJ Land Use Scheme, 2018

A.(e)	Except with the consent of the local authority no animal as defined in the Local Authorities Pounds Regulations, shall be kept or stabled on the erf.	Regulated by the CoJ By Laws
A.(f)	No wood and/or iron buildings or buildings of unburnt clay-brick shall be erected on the erf.	Regulated by the National Building Regulations
A.(g)	Except with the written approval of the local authority and subject to such conditions as the local authority may impose, neither the owner nor any occupier of the erf sink any wells or boreholes thereon or abstract any subterranean water therefrom.	Regulated in the CoJ Land Use Scheme, 2018
A.(h)	Where, in the opinion of the local authority, it is impracticable for stormwater to be drained from higher lying erven direct to a public street the owner of the erf shall be obliged to accept and/or permit the passage over the erf of such stormwater; Provided that the owners of any higher lying erven, the stormwater from which is discharged over any lower lying erf, shall be liable to pay a proportionate share of the cost of any price line or drain which the owner of such lower lying erf may find necessary to lay or construct for the purpose of conducting the water so discharged over the erf.	Regulated in the CoJ Land Use Scheme, 2018
A.(i)	The erf shall be used for the erection of a dwelling house only; provided that, with the consent of the Administrator after reference to the Board and local authority, a place of worship or a place of instruction, social hall, institution or other buildings appertaining to a residential area may be erected on the erf; provided further that the local authority may permit such other buildings as may be provided for in the approved town planning scheme, subject to the conditions of the scheme under which the consent of the local authority is required.	Use of land is regulated in terms of the CoJ Land Use Scheme, 2018

A.(j)	Neither the owner nor any other person shall the right to make or permit to be made upon the erf for any purpose whatsoever any bricks, tiles or earthenware pipes or other articles of a like nature.	Use of land is regulated in terms of the CoJ Land Use Scheme, 2018
A.(k)	Except with the consent of the Administrator who may prescribe such conditions as he may deem necessary, not more than one dwelling-house, together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on the erf; Provided that if the erf is sub-divided or it or any portion of it is consolidated with any other erf or portion of an erf, this condition may with the consent of the Administrator to be applied to each resulting portion or consolidated area.	
A.(k)(i)	The dwelling-house, exclusive of outbuildings, to be erected on the erf shall be of the value of not less than R6,000.00.	Not applicable and outdated
A.(k)(ii)	The main building, which shall be a completed building and not one partly erected and intended for completion at a later date, shall be erected simultaneously with or before the erection of the outbuildings.	Not applicable and outdated
A.(l)	Buildings, including outbuildings, hereafter erected on the erf shall be located not less than 7.87m from the boundary thereof abutting on a street.	Regulated in terms of the CoJ Land Use Scheme, 2018 and is contradictory to the scheme.
A.(m)	The erf is fenced or otherwise enclosed, the fencing or other enclosing device shall be erected and maintained to the satisfaction of the local authority.	Regulated in the CoJ Land Use Scheme, 2018



### 3. MOTIVATION

#### 3.1. NEED AND DESIRABILITY

Application is made to remove the restrictive conditions A.(a) to A.(m) from the Title Deed T47250/2017 due to the following reasons:

1. Condition A.(k)(ii) relates to a building line restriction which is contradictory to the City of Johannesburg Land Use Scheme, 2018, where the building line is stipulated at 3m along street boundaries.
2. The rest of the conditions are repetitive as the matters relating to the use of the property, the building treatment and the procedure to follow with regards to plans are all regulated in other legislation such as the National Building Regulations, the City of Johannesburg Land Use Scheme, the City of Johannesburg By Laws on animals (dogs and cats, and wild animals and birds).
3. Conditions relating to the "Applicant" (township owner) are not applicable as the Company has been deregistered and the "Applicant" is now the Local Authority.

There is therefore no need to include restrictions in the title deed. The larger legislation is legally binding and enforced by the Local Authority.

The conditions are restricting the owners of the property to extend their premises (building line restriction) and as such is required to be removed. The use of the property is not being changed, and will remain to function as a single residential dwelling house.

### 4. SPLUMA DEVELOPMENT PRINCIPLES

In terms of the Spatial Planning and Land Use Management Act (Act 16 of 2013) (SPLUMA), the following principals apply to spatial planning, land development and land use management and are hereby applied to this application:

SPLUMA Referral		Proposed Development Compliance
7 (a)	Spatial Justice	The development addresses the principle of spatial justice as it answers to the rectification of previous injustices by allowing the full potential of the property to be exercised.
7 (b)	Spatial Sustainability	The use of the property is not being amended. It will continue to function as a residential house.
7 (c)	Efficiency	The land development optimises the use of existing engineering infrastructure.
7 (d)	Spatial Resilience	Not applicable
7 (e)	Good Administration	The correct legal procedure is being followed with regard to the removal of restrictive conditions.

## 5. RECOMMENDATION

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The application is made to ensure the title conditions do not contradict the CoJ Land Use Scheme and thus allow the owner of the property to use his property in the most efficient manner possible. The removal of restrictive conditions do not impede on the rights of the neighbouring properties.

We therefore recommend that the application be approved.