

APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS IN RESPECT OF Erf 243, WILDERNESS

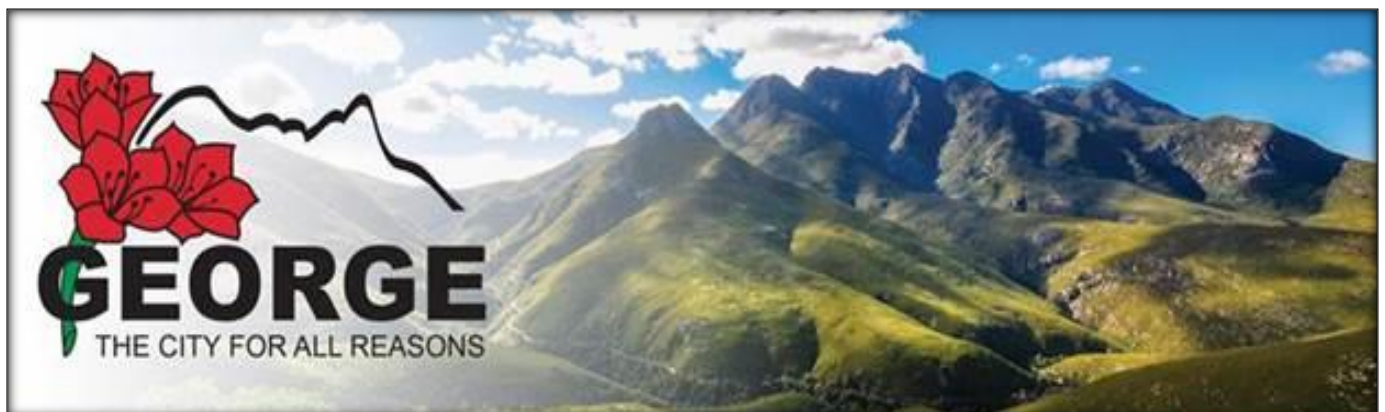
CORNER OF GEORGE AND WATERSIDE ROAD, WILDERNESS

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**HUMAN SETTLEMENTS, PLANNING AND DEVELOPMENT
GEORGE MUNICIPALITY**

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1. APPLICATION

1.1 Land Use Application

Application for the Removal, in terms of Section 15(2)(f) of the Land Use Planning By-Law for George Municipality (2023), of restrictive title deed condition (B) contained in Title Deed T59963/1984 of Erf 243, Wilderness that reads as follows:

“SUBJECT FURTHER to the following conditions contained in the said Deed of Transfer No. 2059/1923 namely:

“The area shown in the diagram of THE PARK shall be an open space or common for the use of all owners (as this term is hereafter defined) for recreational purposes. It shall not be built upon nor shall camping be permitted thereon. Until such time as a Local Authority existing or hereafter established shall take over THE PARK, the control and management thereof shall be vested in the registered owner of THE PARK, who shall have the right to enforce observance of order and cleanliness. The owner of THE PARK and of the remaining extent, hereinafter referred to shall permit owners (as hereinafter defined) at all times to have free access across the PARK and the Remaining Extent to the Touw River, situate on the remaining extent and the sea, and owners (as hereinafter defined) save that the term shall not include their families or visitors shall have the right to moor their boats to the banks of the River. During the progress of any building operation any owner as hereinafter defined, or his Contractor shall be allowed to graze his draught animals in THE PARK for such time – not exceeding two hours in any one day – as is necessary to afford them rest.”

1.2 Background Information

The subject property is zoned for “Open Space Zone II” for public open space purposes has been utilized as an event venue since 1997, there is a track record of several council decisions and lease agreements stating that the Park could be used for events throughout the years for festivals, events, and additional parking.

Erf 243, Wilderness has therefore been used for several types of events for 27 years especially in the summer months when tourism increases.

2. PROPERTY DETAILS

2.1 Property Description

Erf 243, Wilderness is located on the corner of George and Waterside Street, Figure 1 illustrates the locality of the subject property. Constantia Kloof is located to the north of the subject property while the Touws River lies to the east.

The N2 is located to the south and the Wilderness Hotel, which occasionally utilizes the Park as additional parking, is to the west. Wilderness is characterized as a tourism node and the aim of the application is to remove the restrictive title deed conditions to utilize the property to its full potential for occasional events.



The Council Resolution dated 25 July 2024 states that a portion of the road reserve on Erf 243 (directly opposite Erf 2081) be leased to the restaurant, The Girls and the Blind Pig, for outdoor seating. As part of the Council resolution, it was decided that the restrictive title deed conditions be removed to allow the leasing of the land.

The figure (left) illustrates the proposed portion to be leased by the mentioned restaurant.

Table 1 below summarizes the property information which includes the proposed future use of the property.

Table 1: Property Description

Property and Application Information Summary	
Property	Erf 243, Wilderness
Property Diagram	SG No. 601/1922
Registered Owner	George Municipality
Applicant	George Municipality
Title Deed	T59963/1984
Extent	2.3467 ha
Zoning Scheme	George Integrated Zoning Scheme By-Law, 2023
Current Zoning	Open Space Zone I
Current Land Use	Public Open Space
Proposed Land Use	Public Open Space

2.2 Ownership and Title Deed Conditions

Ownership of Erf 243, Wilderness is registered in favor of the George Municipality by virtue of Title Deed T59963/1984.

Condition (B) in the subject title deed is restrictive and aims to be removed:

“SUBJECT FURTHER to the following conditions contained in the said Deed of Transfer No. 2059/1923 namely:

“The area shown in the diagram of THE PARK shall be an open space or common for the use of all owners (as this term is hereafter defined) for recreational purposes. It shall not be built upon nor shall camping be permitted thereon. Until such time as a Local Authority existing or hereafter established shall take over THE PARK, the control and management thereof shall be vested in the registered owner of THE PARK, who shall have the right to enforce observance of order and cleanliness.”

The owner of THE PARK and of the remaining extent, hereinafter referred to shall permit owners (as hereinafter defined) at all times to have free access across the PARK and the Remaining Extent to the Touw River, situate on the remaining extent and the sea, and owners (as hereinafter defined) save that the term shall not include their families or visitors shall have the right to moor their boats to the banks of the River. During the progress of any building operation any owner as hereinafter defined, or his Contractor shall be allowed to graze his draught animals in THE PARK for such time – not exceeding two hours in any one day – as is necessary to afford them rest.”

The restrictive condition is registered in favour of the Owners (in this case the George Municipality) for the purpose of always protecting the owner's rights to free access across the park.

3. STATUTORY CONTEXT

3.1 Spatial Planning and Land Use Management Act, 2014

Section 7 of the "Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)" lists 5 development principles which must be applied when any development application is to be evaluated. The principles referred to are as follows:

- "Spatial justice"
- "Spatial sustainability"
- "Spatial efficiency"
- "Spatial resilience"; and
- "Good administration"

Different development principles are identified under each of the 5 abovementioned principles which must be applied when a land use application is to be evaluated. The proposed application for removal of restrictive title deed condition will subsequently be evaluated on each of the principles.

Spatial Justice

The proposed application will improve the use of the land as it is currently being underutilized. Although the restrictive title deed condition (B) aims to always protect free access across the park, using the subject property for events will increase domestic and international tourism in the area. It will also allow The Girls to use a portion of the property, as per the Council resolution for outdoor seating purposes.

Spatial Sustainability

The park has been utilized for events for the past 27 years and removing the restrictive title deed condition will contribute the tourism and economic node that is Wilderness. Community engagement and domestic tourism will ensure that the use of the park remains sustainable.

Spatial Efficiency

The proposed land development optimizes the use of existing resources and will provide an economic injection in the Wilderness node.

Spatial Resilience

The park will remain Public Open Space (to be utilized by all) with the capability to have occasional events on the park area.

Good administration

The application process will adhere to the Municipal standards.

3.2 Consistency and compliance with LUPA, 2014 (Act 3 of 2014)

Section 39(5) of the Land Use Planning Act (LUPA 2014) states that a municipality must have regard to the principles, as listed below, when considering removing a restrictive condition. The paragraphs below indicate an assessment as to how the proposal responds to the said principles.

39(5)(a): The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement.

The title deed conditions were imposed to allow for free access across the park. However, the utilization of land for the purposes of events have been allowed since 1997. There is thus a need from the community for space where events and festivals may be held. The removal of the said conditions will not cause a financial loss to any of the property owners within the Township (Wilderness) or the Municipality.

39(5)(b): The personal benefits which accrue to the holder of rights in terms of the respective condition.

Although the restrictive condition promoting free access will be removed it is not the intention to fence the park off or permanently close the park. The goal is to allow for events and activities that will boost and promote the existing tourism in the area and sustainability increase the economy of George.

39(5)(c): The personal benefits which will accrue to the person seeking the removal, suspension, or amendment of the restrictive condition if it is removed, suspended, or amended.

The property owner, as well as possible future lessees of the property, will achieve personal benefits from the deletion of the title deed conditions as it will enable the development of the site to its full potential in accordance with its zoning rights.

39(5)(d): The social benefit of the restrictive condition remaining in place in its existing form.

There is no social benefit in retaining the restrictive title deed conditions, as the application is regarded as being fully consistent with the surrounding land uses and existing zoning rights.

39(5)(e): The social benefit of the removal, suspension, or amendment of the restrictive condition.

As stated above, the capital investment on the site will most likely contribute to the value and benefit the surrounding property values. By removing the title deed condition, it will enable the property owner to utilize the park to its full potential in terms of its zoning rights.

39(5)(f): Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

The removal of the restrictive condition will allow the Municipality to occasionally lease out the property for the purposes of events. The right to enter the property will remain in place as the property will still be zoned as

Public Open Space, the removal will just allow the public to lease the land and possibly charge an entry fee for the limited time of the event. As previously stated, a small portion of Erf 243 will be lease to The Girls restaurant for outdoor seating as per the attached Council resolution.

3.3 George Municipal Spatial Development Framework, 2023

Although the subject property is not specifically mentioned in the MSDF (2023) it states that Wilderness is one of the most popular tourism destinations along the Garden Route, and the Municipality aims to preserve the present environment by, among other, improve tourism opportunities.

According to the MSDF 2023, more compact and diverse neighbourhoods (where people can live, work, and recreate) with better housing choice, walkable streets and accessible (usable) open spaces should be perused. The MSDF (2023) requires that developers make optimal use of strategically located vacant and underutilized land. The development proposal aligns with this aspect of the MSDF (2023) as the removal will enable the utilization of the Public Open Space area.

The application for the removal of the restrictive title deed conditions is not in conflict with the MSDF (2023).

3.4 Wilderness, Lakes, Hoekwil Local Spatial Development Framework, 2015

The WLHLSDF states that the Wilderness area is characterized as a tourism area, the subject property lies within the business node of Wilderness. The WLHLSDF further supports preservation of the natural area and the rural character of the area. The zoning will remain Public Open Space and the removal of the title deed condition will allow the park to be utilized for recreational activities and occasional uses as per the land use description stated in the Zoning Scheme.

The proposed application will not alter the character of the area and the park will always be able to revert to its original use of a public open space.

3.5 George Integrated Zoning Scheme, 2023

According to the Zoning Scheme (as highlighted below) under point (c) of the land use description a public open space may include an occasional use. By removing the restrictive title deed condition, the park can be utilized to its full potential in accordance with the Zoning Scheme.

With the removal of condition (B) of the title deed events will be permissible on the subject property. Although events will be allowed, the municipality will still evaluate the impact of each event and will be able to implement mitigations if necessary. This is done by the Tourism and Community Service Department.

See Zoning Scheme extract below:

“public open space”

Land use description: “public open space” -

- a) means land, with or without access control –*
 - i) owned by the Municipality or other organ of state;*
 - ii) not leased out by the Municipality or that other authority on a long-term basis*
 - iii) set aside for the public as an open space for recreation or outdoor sport and designated as*
 - iv) public open space;*
- b) includes a park, playground, public or urban square, picnic area; community garden, natural area and ancillary buildings and infrastructure, stormwater infrastructure and engineering services; and*
- c) may include an occasional use.*

4. NEED AND DESIRABILITY OF THE APPLICATION

As previously stated, the area can be characterized as rural residential with a focus on tourism and the natural environment. Since the park has been used for venue purposes for several years there is a need for the proposed land use in the area. The character of the area will not be negatively affected, and current economic activities will benefit from an additional ancillary use (e.g. events).

5. CONCLUSION

The removal of the title deed conditions is considered favourable given that:

- The Park has been utilized for events since 1997 (through council resolutions and lease contracts) and therefore has the potential to improve and increase tourism in the area.
- The removal of the restrictive conditions will not negatively impact the character of the area, in hindsight, it could potentially benefit the tourism node.
- The conditions restrict the property from being utilized to its full potential as per its zoning rights in terms of the George Integrated Zoning Scheme By-Law, 2023