



# NELSON MANDELA BAY DRAFT BYLAW

Draft Problem Building Bylaw

*Working Draft 3.2 for Public Participation*

September 2017

**Written submissions can be submitted to:**

Ms P Gwabeni at [pgwabeni@mandelametro.gov.za](mailto:pgwabeni@mandelametro.gov.za); or  
Mr S Potgieter at [spotgiet@mandelametro.gov.za](mailto:spotgiet@mandelametro.gov.za)

[<CLICK HERE TO SUBMIT>](#)

**Nelson Mandela Bay Metropolitan Municipality  
DRAFT PROBLEM BUILDING BY-LAW – Version 3.2 20161116**

<b>TITLE OF BY-LAW</b>	PROBLEM BUILDING BY-LAW
<b>BY-LAW OWNER</b>	Executive Director: Human Settlements
<b>BY-LAW CHAMPION</b>	Pumza Gwabeni Tel: 041 506 2122 E-mail: <a href="mailto:pgwabeni@mandelametro.gov.za">pgwabeni@mandelametro.gov.za</a>
<b>BY-LAW DRAFTER</b>	Law Consultant (Refer Prof. Hennie van As) on appointment via Maci Incorporated Attorneys

**DOCUMENT HISTORY:**

By-law Title	Status ( <i>current, revised, no change, redundant</i> )	Approving Authority	Decision date	Resolution No.	Ref No.	Doc No.	Pending date for next revision
Draft By-law (2010)					Version 1		
Draft By-law (2016)					Version 2		
Draft By-law Review – WD 1	New Working Draft (WD)	Considered by core By-law working group	26/10/2016		Version 3	WD3.0 20161026	
Draft By-law Review – WD 2	Additions and amendments	Tabled and considered by PSC	16/11/2016		Version 3	WD3.20161031	
Draft By-law Review – WD 3	Revision and amendment circulated for input				Version 3	WD3.2 20161116	
Draft By-law for Review WD4	Adopted for public participation	Council 23 May 2017	23 May 2017	Item 14, page 140	Version 4	WD3.4 20170719	

**Nelson Mandela Bay Metropolitan Municipality**  
**DRAFT PROBLEM BUILDING BY-LAW – Version 3.2 20161116**


**NELSON MANDELA BAY METROPOLITAN MUNICIPALITY:**  
**PROBLEM BUILDING BY-LAW**

Under the provisions of Section 156 of the Constitution of the Republic of South Africa, 1996 the Nelson Mandela Bay Metropolitan Municipality, enacts as follows: –

**TABLE OF CONTENTS**

1. Definitions
2. Principles, objectives and application
3. Appointment, identification and entry by authorised officials of buildings and land
4. Declaration of a building as a problem building and the right to appeal
5. Compliance notice
6. Service of a notice
7. Restriction of liability
8. Civil action
9. Exemptions
10. Offences and penalties
11. Short title

**1. Definitions**

In this By-law, unless the context otherwise indicates –

**“authorised official”** means an employee of the local authority authorised by the local authority or authorised by any delegated official of the local authority, to implement and enforce the provisions of this By-law;

**"court"** means the Magistrates Court or High Court or Municipal court having jurisdiction over an area falling within the jurisdiction of the local authority;

**“building”** includes –

- (a) any structure, including but not restricted to containers, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, erected or used for or in connection with the -
  - (i) accommodation or convenience of human beings or animals;
  - (ii) manufacture, processing, storage, display or sale of any goods;
  - (iii) rendering of any service;
  - (iv) destruction or treatment of refuse or other waste materials;
  - (v) cultivation or growing of any plant or crop;
- (b) any wall or part of a building;
- (c) a unit as defined in the Sectional Title Act, 1986 (Act No. 95 of 1986) or any amendments thereto or substitutions thereto;
- (d) any vacant or unoccupied erf;
- (e) any advertising sign, advertising board or other structure as defined in the local authority's Advertising and Signage By-laws, as promulgated from time to time; and
- (f) all structures which fall within the definition of "building" in:

- (i) the National Building Regulations and Building Standards (Act 103 of 1977) and any amendments thereto or substitutions thereof, as well as any Regulations promulgated thereunder;
- (ii) any town planning scheme in operation in respect of the property;
- (iii) all regulations and standards issued by the South African Bureau of Standards or related authority.

**“disability”** refer to persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others;

**“local authority”** means:

- (a) the Nelson Mandela Bay Metropolitan Municipality established in terms of Section 12 of the Municipal Structures Act, 117 of 1998) and any amendments thereto or substitutions thereof, and includes any political structure, political office bearer, councillor, duly authorised agent thereof or any employee thereof acting in connection with this by-law by virtue of a power vested in the local authority and delegated or sub-delegated to such political structure, political office bearer, councillor, agent or employee;
- (b) any structure or person exercising a delegated power or carrying out an instruction, where any power in these By-laws has been delegated or sub-delegated, or an instruction given, as contemplated in Section 59 of the Municipal Systems Act, 2000 (Act no. 32 of 2000) ) and any amendments thereto or substitutions thereof;

**“National Building Regulations”** means regulations issued in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) and any amendments thereto or substitutions thereof;

**“nuisance”** means any act or omission or condition on any premises or place, including any building or structure, or any growth on such premises place which is offensive or dangerous, or which materially interferes with the ordinary comfort, convenience, peace or quiet of other people or which adversely effects the safety of people;

**“overcrowding”** means

- (a) a residential occupancy in excess of 12 occupants per sanitary convenience; or
- (b) occupancy of habitable rooms (being all rooms in a dwelling excluding kitchens, bathrooms and sanitary conveniences) utilised for sleeping purposes where such occupation exceeds 1 adult person per 4 m<sup>2</sup> and 1 child under 10 years of age per 2 m<sup>2</sup>, or in situations where double bunks are used for sleeping purposes, occupation exceeds 3m<sup>2</sup> per adult person (occupying a double bunk bed) or 2m<sup>2</sup> per child under 10 years occupying a double bunk, provided that children under the age on one year are excluded from this calculation; and

**“owner”** in relation to a building or land means:

- (a) the person in whose name the land on which such building was or is erected, as the case may be, is registered in the deeds office in question and includes a person in charge of such building, provided that if –

- (i) such person, in the case of a natural person, is deceased or was declared by any court to be incapable of managing his or her own affairs or a prodigal or is a patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973) and any amendments thereto or substitutions thereof, or if his or her estate has been sequestrated, the executor or curator concerned, as the case may be;
  - (ii) such person, in the case of a juristic person, has been liquidated or placed under judicial management, the liquidator or judicial manager concerned, as the case may be;
  - (iii) such person is absent from the Republic or if his or her whereabouts are unknown, any person who, as agent or otherwise, undertakes the management, maintenance or collection of rentals or other moneys in respect of such building or who is responsible therefore;
  - (iv) a mortgage bond is registered in favour of a financial institution, that financial institution;
  - (v) in the case of a sectional title scheme, a sectional title unit is registered in the name of a person, that person;
  - (vi) in the case of a sectional title scheme, a body corporate responsible for the control, administration and management of the common property; or
- (b) the person, any or all of the trustees of a trust or body corporate, any or all of the members of an association, any and all members of a partnership, any or all of the directors of a company, any or all of the members of a close corporation, registered as the owner or holder of any property in the relevant deeds registry office; or
- (c) the person, any or all of the trustees of a trust or body corporate, any or all of the members of an association, any and all members of a partnership, any or all of the directors of a company, any or all of the members of a close corporation, seemingly in charge of the property, whether due to any reason, including but not limited to:
- (i) the property being abandoned by the registered owner or holder thereof; or
  - (ii) the registered owner or holder thereof being absent from the Republic of South Africa or his or her whereabouts are unknown to the local authority; or
  - (iii) the property having been taken over by such person with or without consent of the registered owner or holder thereof; or
  - (iv) such person collecting or accepting any monetary compensation in respect of the occupation of the building;
  - (vi) such persons as being appointed by the registered owner or holder thereof to be in charge of the property; and whether or not such person undertakes or at any time undertook the management, maintenance or collection of rentals or other moneys in respect of such property or who is or was responsible thereof;

- (d) a trustee in an insolvent estate which is the registered owner, registered holder or person in charge of property;
- (e) the representative appointed by a court of law of any registered owner or of a person in charge of the property who is a minor or of unsound mind or is otherwise under disability; and
- (f) where the local authority is unable to determine the identity of such person as mentioned in sub sections (a) to (e) above, any person who accepts or is entitled to or who have accepted or were entitled to the benefit of the use of such property or who enjoys or enjoyed such benefit.

## **2. Principles, objectives and application**

(1) The Nelson Mandela Bay Metropolitan Municipality adopts this by-law to provide for the identification, control and management of dilapidated and problem buildings and land in its area of jurisdiction with the aim of protecting and promoting the interests of all people in the Nelson Mandela Bay Metropolitan area by providing, in conjunction with applicable laws, a legal and administrative framework within which the local authority can develop and manage its constitutional and other legislative obligations, including but not limited to its obligations to promote a safe and healthy environment.

(2) In the development and management of its obligations and the implementation of this by-law, the local authority also recognises the infrastructural, social and economical disparities and inequalities resulting from previous local government dispensations and shall strive to overcome such disparities and inequalities by supporting the goals for local government as laid down in section 152 of the Constitution.

(3) In the implementation and enforcement of this by-law, the local authority may take into consideration the realities of the Nelson Mandela Bay Metropolitan area, the different customs, cultures, circumstances, geographical areas, kinds of premises, levels of development and conventions and the local authority may from time to time determine the areas in which the by-law will be applicable.

(4) This By-law applies to all problem buildings situated within the area of jurisdiction of the local authority, except those situated in areas exempted from the application of the National Building Regulation and Building Standards Act, 1977 (Act 103 of 1977), any amendments thereto or substitutions thereof.

## **3. Appointment, identification and entry by authorised officials of buildings and land**

(1) The Municipal Manager or any other person with the relevant authority delegated to him or her by the local authority, may appoint authorised officials to implement and enforce the provisions of this By-law.

(2) Any authorised official may enter any building or land at any reasonable time with a view to -

- (a) inspect or determine whether the building or land complies with any provision of this By-law or any other legislation, subject to 7 days' notice of such intended inspection having been given to the owner;

- (b) inspect and determine whether the property or building is a problem building; or
  - (c) serve the owner of the building or land with a compliance notice as contemplated in section 5.
- (3) No person may hinder or obstruct the authorised official in the exercise of his or her powers in terms of the By-law.
- (4) An authorised official must, when entering the building or land, produce a valid identification document or appointment certificate issued to him or her by the local authority to the owner of such building or land.

**4. Declaration of a building as a problem building and the right to appeal**

(1) An authorised official may, subject to the provisions of this section, declare a property or a building or any part thereof a problem building, provided that one or more of the following circumstances exist at the property: The building -

- (a) appears to have been abandoned by the owner, irrespective of whether the municipal rates or other municipal service charges have been paid or not;
- (b) does not comply with existing legislation or is not maintained in accordance with the health, fire-safety and town planning scheme or by-laws;
- (c) has no or limited use of lifts that were installed in the building;
- (d) is overcrowded;
- (e) is unhealthy, unsanitary, unsightly or objectionable in terms of any applicable legislation or, as determined by the local authority -
  - (i) has overloaded or illegally connected electricity supply;
  - (ii) has illegally connected water supply;
  - (iii) has no electricity supply;
  - (iv) has no water supply;
  - (v) has illegal connections to sewer mains;
  - (vi) has overflowed or blocked sewer drains;
  - (vii) constitutes a nuisance; or
  - (viii) is a place where refuse, waste material, rubble, scrap or any similar material is accumulated, dumped, stored or deposited, unless so stored in terms of a valid approval by the local authority;
- (f) is the subject of complaints of criminal activities, including but not limited to drug dealings, prostitution and money laundering as is evidenced by complaints lodged at the South African Police Services or the local authority;
- (g) is occupied illegally;
- (h) is partially completed and the responsible person has not complied with a Notice issued in terms of Section 11 of the National Building Regulations and Building Standards Act, 1977 and any amendments thereto or substitutions thereof;
- (i) is structurally unsound;



- (j) is a threat or danger to the safety of the occupiers, registered owners, responsible person or the public in general; and
  - (k) is partially completed, abandoned or structurally unsound and shows signs of any of the risks contemplated in paragraphs (a) to (j).
- (2) Before declaring a building a problem building, the authorised official must give notice in writing to the owner and occupiers and such notice must:
- (a) state the fact that the authorised officer is considering declaring the building or property a problem building;
  - (b) provide reasons for such intention;
  - (c) establish a platform to engage meaningfully with the owner and occupiers; and
  - (d) if the engagement in terms of subsection (2)(c) fails to resolve the matter, grant the owner and occupiers a period of not less than 10 (ten) days, excluding Saturdays, Sundays and Public Holidays, within which to submit written representations as to why the building or property should not to be declared a problem building.
- (3) A committee established by the municipality, consisting of at least two officials, provided that the authorised officer who made the declaration in terms of subsection (1) or who served the notice in terms of subsection (2) may not be a member of such committee, must:
- (a) Consider the written representations submitted by the owner; and
  - (b) declare that the building is a problem building or that it is not a problem building; and
  - (c) provide the responsible person with a written decision by way of service in terms of section 6 below.
- (4) The declaration of a building as a problem building in terms of this section and the procedures prescribed by this will not preclude the authorised official from having the authority to issue spot fines in terms of this by-laws or any other relevant legislation or by-laws or to take any further action as provided for in this by-laws or any other relevant legislation or by-laws.
- (5) The owner shall, in respect of a declaration made in terms of subsection (1), have a right of appeal in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) ) and any amendments thereto or substitutions thereof.

## **5. Compliance notice**

- (1) When a building is declared a problem building, the authorised official must serve a written notice on the owner and take all reasonable steps to explain the impact of the fact that the property has been declared as such and the notice must require the owner to comply with the provisions of this by-law and any other relevant legislation or by-laws within a specified period.
- (2) Despite the provisions of sub section (1), and subject to any applicable legislation, if the authorised official has reason to believe that the condition of any building or property is such that steps should immediately be taken to protect the safety and health of persons or property, he or she may take such steps as may be

necessary in the circumstances to alleviate that condition, without serving or delivering such notice on or to the owner and the local authority may recover the cost of taking such steps from the owner.

(3) The authorised official may serve a written notice on the owner of any building or land which has been declared a problem building as referred to in section 4, requiring such owner within a specified period to –

- (a) clean, repair, renovate, repaint, alter, close, demolish or secure such problem building;
- (b) complete the problem building or any structure of such building;
- (c) enclose, fence or barricade such problem building or land;
- (d) instruct, at the cost of such owner, an architect or other registered person, to investigate such problem building and to report to the authorised official on the nature and extent of the steps to be taken to render such problem building safe or to rectify the deficiency which caused the building to be declared a problem building;
- (e) dispose of, destroy or remove any material or article accumulated, dumped, stored or deposited in any building, which is refuse or waste and which is unsightly or is likely to constitute an obstruction; or
- (f) comply with any provision of this By-law.

(4) Failure by an owner to comply with a notice served on him or her in terms of subsection (1) constitutes an offence and the local authority may, if an owner fails to comply with such a notice, clean, repair, renovate, repaint, alter, close, demolish or secure any problem building at the cost of the owner.

(5) The local authority may, if the owner fails to pay the cost contemplated in subsection (2) or (4), recover the cost in terms of the Customer Care and Revenue Management By-law.

(6) If the authorised official deems it necessary for the safety of any person, he or she may, by notice in writing, and subject to any applicable legislation:

- (a) Order the owner of any problem building to remove, within the period specified in such notice, any person occupying or working, or who for any other purpose is in or on the problem building, and to take care that no person who is not authorised by the local authority enters the problem building; and
- (b) order any person occupying, operating or working from, or who for any other purpose is in or on any problem building, to vacate such building:

Provided that such notice will only be served after the municipality and the owner or occupiers engaged with each other meaningfully.

(7) The municipality must keep a complete and accurate account of the process of engagement

(8) Failure to comply with a notice served in terms of subsection (5) constitutes an offence.

(9) No person shall occupy, use or permit the occupation or use of any problem building or continue to occupy, use or permit the occupation or use of any problem building in respect of which a notice was issued in terms of sub section (3) or

where steps were taken by the local authority in terms of this section, unless he or she has been granted permission by the local authority in writing that the problem building may be occupied or used, as the case may be and failure to comply with this subsection constitutes an offence.

**6. Service of a notice**

- (1) Any notice or other document that is served on a person in terms of this by-law is regarded as having been duly served –
  - (a) when it has been delivered to that person personally;
  - (b) when it has been left at that person's place of residence or business in the Republic with a person apparently over the age of 16 years;
  - (c) when it has been posted by registered or certified mail to that person's last known residential or business address in the Republic, and an acknowledgment of the posting thereof from the postal service is obtained;
  - (d) if that person's address in the Republic is unknown, when it has been served on that person's agent or representative in the Republic in the manner provided by paragraphs (a), (b) or (c);
  - (e) if that person's address and agent or representative in the Republic is unknown, when it has been posted in a conspicuous place on the land or business premises to which it relates;
  - (f) in the event of a body corporate, when it has been delivered at the registered office of the business premises of the body corporate; or
  - (g) when it has been delivered, at the request of that person, to his or her e-mail address.
- (2) When a compliance notice is authorised or required to be served on a person by reason of his or her being or having been the owner or holding some other right in respect of immovable property, it shall not be necessary to name him or her, but it shall be sufficient if he or she is therein described as the owner or holder of such immovable property or other right, as the case may be.

**7. Restriction of Liability**

The local authority or any authorized employee of the local authority shall not be liable for any damage caused by anything done or omitted in the exercise of a power or the performance of a duty conferred or imposed in terms of this by-law.

**8. Civil Action**

- (1) In addition to or instead of the action contemplated in section 5, the local authority may proceed with civil action against any owner or person who contravenes or permits a contravention of the provisions of this by-law.
- (2) All costs of the civil action on an attorney and client scale will be recoverable by the local authority from the owner or person who contravenes this by-law in respect of all legal action taken against such owner or person by the local authority and such costs shall be payable upon demand by the local authority.

## **9. Exemptions**

- (1) Any person may by means of a written application, in which the reasons are given in full, apply to the local authority for exemption from any provision of this by-law.
- (2) The local authority may:
  - (a) Grant an exemption in writing and impose conditions and the period for which such exemption is granted;
  - (b) alter or cancel any condition in an exemption; provided that the local authority must give reasonable notice of such intention and give the applicant reasonable time to make representations; or
  - (c) refuse to grant an exemption in which case the applicant must be informed of the reasons for such refusal.
- (3) In order to consider an application submitted in terms of sub-section (1), the local authority may obtain the input or comments of the owners or occupants of surrounding premises.
- (4) An exemption does not take effect before the applicant has undertaken in writing to comply with all conditions imposed by the local authority in terms of sub-section (2) and if any activity is commenced with before such undertaking has been submitted to the local authority, the exemption lapses.
- (5) If any condition of an exemption is not complied with, the local authority may withdraw or cancel such exemption: Provided that the local authority must give reasonable notice of such intention and give the applicant reasonable time to make representations.

## **10. Offences and penalties**

A person who contravenes any of the provisions of this by-law is guilty of an offence and is liable to a fine as approved by the Chief Magistrate of the District in a fine schedule or to imprisonment for a period not exceeding three years and in addition, the payment of a further amount which, in the opinion of the court, is equal to the expenditure incurred by the municipality as a result of such contravention.

## **11. Short title**

This By-law may be cited as the Nelson Mandela Bay Metropolitan Municipality: Problem Building By-law.

[\*\*<CLICK HERE TO SUBMIT>\*\*](#)