



REPORT TO MUNICIPAL PLANNING TRIBUNAL

Case ID	70466878
Case Officer	Songezo Ndaba / Kajabo Ngendahimana
Case Officer phone number	021 444 7515
District	Tygerberg
Ward	26
Ward Councillor	Francesca Walker
Report date	October 2019

ITEM NO **MPTNE12/11/19**

WARD 54: APPLICATION FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF SECTION 42(r) OF THE CAPE TOWN MUNICIPAL PLANNING BY LAW, 2015: ERF 4544, GOODWOOD, 122 CAMBRIDGE STREET, RICHMOND ESTATE

1 EXECUTIVE SUMMARY

Site extent	495m ²
Current zoning	Single Residential zoning (SR1)
Current land use	Dwelling House
Overlay zone applicable	None
Submission date	2019-10-04
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, unauthorised building work that relates to the construction of a carport without prior planning approval. This triggers a street building line departure. The existing garage was also converted into a second dwelling unit that triggers the necessity for a parking departure. The second dwelling, however, is an additional use right and falls within the building lines of the DMS.
Has owner applied for the determination of an administrative penalty	The property owner has applied for the determination of an administrative penalty.
Has the City Manager applied to the MPT for an order that a person who is contravening the MPBL must pay an administrative penalty in an amount determined by the MPT	No
Has the City issued a demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be	No

applied for.	462
Has the City served a notice on the owner or other person in respect of the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	Yes, a notice to obtain the necessary planning approval was issued to the property owner on 20/10/2017. A copy of the notice is Annexure D.

2 BACKGROUND / SITE HISTORY

The owners were served with a notice on 17 October 2017 to submit building plans for unauthorised building works in terms of the National Building Regulations and Building Standards Act no 103 of 1977. The owners were however in possession of a building plan with an approved stamp dated August 2017 that was provided to them by their Architect. Upon further investigation, it came to light that the stamp, case number and signatures as reflected on the approval stamp do not correspond with information in Council's system.

Additional examples of similar cases dealt with by the said Architect, was also discovered by this District upon further investigation. The matter has been referred to head office for further action to be taken.

2.1 The site is not located in an HPOZ area.

The extent of the unauthorised encroachment of the street building line is 34.26m² as the structure is wider than 6.5m.

Historically the property was developed with a dwelling house with a garage see Annexure B. The owners decided to convert an existing garage into second dwelling and constructed a carport. The owners were under the impression that an approved building plan was obtained.

A notice to obtain the necessary planning approval was issued to the property owner on 20/10/2017. A copy of the notice is Annexure E.

This application resulted from the submission of the building plan and the comment received that an application for determination of an administrative penalty is required (see Annexure F comment from building plan process).

The administrative penalty application is referred to the MPT for a determination.

3 SUMMARY OF APPLICANT'S MOTIVATION

3.1 The applicant's motivation of the proposed is attached as Annexure D and may be summarised as follows:

- The unauthorised building work relates to the conversion of an existing garage into a second dwelling and the construction of a carport without prior planning approval.
- The owners acted on what they believed to be a copy of an approved building plan handed to them by the architect.
- Construction was undertaken as per the building plan.
- The size of the unauthorised building work is 14.7m² (the correct measurement being 34.26m²)
- The unauthorized building work was undertaken from September 2017.
- The contravention has no negative impact on the surrounding.
- A cease work notice was issued and the owner submitted plans for approval.
- The unlawful conduct has not stopped as the structure is in existence.
- The owner has not previously contravened the planning by-law.

4 ASSESSMENT OF APPLICATION

4.1 The unauthorised work contravenes the DMS. The owner converted an existing garage into a second dwelling and constructed a carport without prior planning approval (see Annexure C).



4.2 Section 129(7) (a) of the By-Law requires that the administrative penalty not exceed 100% of the unauthorized work.

Administrative Penalty: Calculation

- 4.2.1** The applicant did not provide a quotation for the unauthorised building work undertaken. The costs indicated in the City's Standard Operating Procedure spreadsheet of "building works value" will be used and indicates that:

$$R5720 \times 34.26m^2 = R195\,967.20$$

The administrative penalty may not exceed 100% of R 195,967.20

- 4.1** The following factors need to be considered when determining an appropriate administrative penalty, as contemplated by section 129(8) of the By-Law:

Nature: The unauthorised building work is for the construction of a carport without prior planning approval.

Duration: The additions and alterations were built 2 years ago.

Extent: The extent of the contravention is approximately 34.26m².

Gravity: Although the construction of a carport without necessary approval is a concern, the structure is not of a habitable nature and similar in nature to other structures found within the area. The gravity of the contravention is therefore regarded as of a medium nature.

Conduct: The owners were clearly misled by their architect in believing that an approved building plan has been obtained. Construction only commenced upon receipt of such stamped plan from the architect and it can be deduced that the owners acted in good faith. Further investigation by this office has revealed similar questionable conduct by said architect which is currently under investigation.

Unlawful conduct ceased: The unauthorised building work has been completed.

Previous contraventions: There is no record of any previous contraventions by the owners of the property.

5 REASONS FOR DECISION

5.1 Reasons for the recommended decision may be summarised as follows:

5.1.1 Although building work commenced without an approved building plan or Land Use Management approval, it is believed that the owners were misled by their architect and was presented with a building plan that carried Council's approved stamp that was clearly obtained and applied in a dishonest manner.

5.1.2 Upon presented with the facts, the owners proceeded to rectify the unauthorised nature of the building works with the submission of a building plan.

6 RECOMMENDATION

In view of the above, it is recommended that:

- 6.1 An administrative penalty of **R0.00** be determined in terms of Section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 4544, Goodwood.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Copy of an approved building plan
Annexure c	Building plan
Annexure D	Applicant's motivation
Annexure E	Copy of the notice served
Annexure F	Comment from building plan process



Section Head: Land Use Management

Name Tess Kotze

Tel no 021 444 7506

Date 28.10.2019



District Manager: Table Bay

Dewaldt Smit

021 4447840

29/10/2019

Annexure

A

Locality Plan

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT
LOCALITY MAP

467

ANNEXURE : A



Overview

Erf: 4544

District: TYGERBERG

Allotment: GOODWOOD

Suburb: RICHMOND ESTATE

Ward: 26

Sub Council: Subcouncil 4



1:2 400

Notices Served



Support
Received



Petition
Signatory



Objections
Received



Generated by: KE Ngendahimana

Date: 24 October 2019

File Reference: 70466878



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Making progress possible. Together.

Annexure⁴⁶⁸

B

Copy of an approved building plan

SECTION-A-A

Technical drawing of a building section, labeled "SECTION-A-A". The drawing shows a cross-section of a structure with a gabled roof. The roof is supported by a central vertical post and two side posts. The roof slope is indicated by a dashed line. The structure is shown in a perspective view, with the front and side walls visible. The drawing is labeled "SECTION-A-A" on the right side. There are various dimensions and annotations, including "10'-0\"/>

STREET - WASHINGTON DRIVE NOT ON THE RECORD ON
OF "CONCRETE IN" COURT, FILED.

ALBERT C. ANDERSON
REPRESENTS DUNN ANDERSON &
ASSOCIATES.

NOTES

FLOOR PLAN

52074 6.8.1971

DATE	TIME	LOCATION	WIND	WAVE	SEA	TEMP	WIND	WAVE	SEA	TEMP
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مجلس اعلیٰ

RECEIVED WELTUNG FOR MR. M. SMITH ON 1235 - CAMBERIDGE - VASCO

17

10-1-58
WFE 2115

469

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[illegible]

Annexure

C

Site Development Plan

15.7 km

After 12m encroachment of 5m lateral bldg line :
 Allowed = 60% of 54.715m = 32.829m
 Actual = 13.380m

All finishes to owner's specifications

All dimensions to be checked on site

Written dimensions to be preferred to that scaled

SCALE : 1 : 200

AREAS:	FRF	=	495,684 sqm
Existing residence		=	126,903 sqm
Existing path		=	29,275 sqm
Proposed conversions		=	21,630 sqm
Proposed addition		=	30,909 sqm
Proposed final residence		=	54,914 sqm
Proposed Carport		=	45,457 sqm

ORIGIN : E. LOMBARD , Tel : 082 924 4181

PROPOSED ADDITIONS

TO RESIDENCE

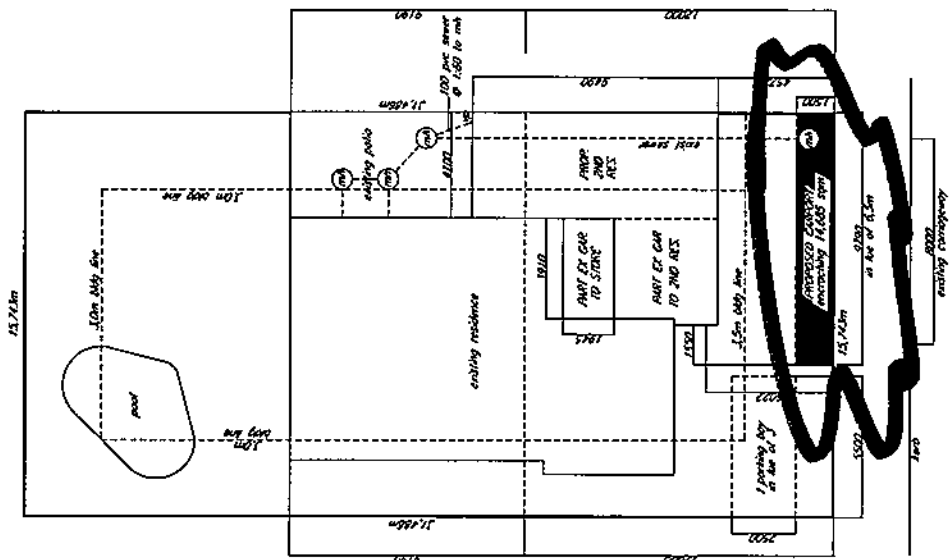
ON ERF 4544

122 CAMBRIDGE STREET

GOODWOOD

FOR K. COETZEE

210 / 145 SH 1 of 2



222 CALIFORNIA STREET

SITE PLAN

Annexure

D

Applicant's motivation

474

K. COETZEE

ERF 4544

122 CAMBRIDGE STREET

GOODWOOD

CELL : 0727590691

20/09/2019

CITY OF CAPE TOWN

Application for Determination of Administrative Penalty

IN 2017 MR PAUL ARENDSE (ARCHITECTURAL TECHNOLOGIST REG. NO T1561) ,
DID PLANS FOR PROPOSED CARPORT & CONVERSION OF GARAGE TO TV RM.

HE PROVIDED US WITH THE APPROVED PLANS , DATED 3RD AUGUST 2017.

(SEE ATTACHED).

ON THE BASIS THAT PLANS WERE APPROVED , THUS THE BUILDING WORK OF
35sqm & 45sqm CARPORT COMMENCED & WAS COMPLETED BY OCTOBER '17.

ON 9TH OCTOBER 2017 , COUNCIL ISSUED A "NOTICE TO OBTAIN WRITTEN
APPROVAL FOR THE UNAUTHORISED BUILDING WORK" (SEE ATTACHED).

ACCORDING TO COUNCIL THE APPROVAL NUMBER ON THE APPROVED PLAN ,
WAS FOR AN APPROVED PLAN FOR ERF 2868 , AVONDALE , PAROW.

(SEE ATTACHED).

RE THE AFORE MENTIONED , IT IS BELIEVED THAT AN AMINISTRATVE PENALTY
IS NOT APPLICABLE , SO THAT THE BUILDING PLAN CAN BE APPROVED.

(SEE ATTACHED).

I HAVE NEVER BEFORE CONTRAVENED ANY MUNICIPAL BY-LAW.

SEE PAGE 2 :

FACTORS IN TERMS OF SECTION 129(8) OF THE "MBA" :

- (a) Nature , duration , gravity & extent of the contravention :
Nature : Carport encroaching 1,5m street building line ; carport width exceeded ; insufficient parking provision.
Duration : from about September 2017 until current.
Gravity : the contravention does/did not affect anybody negatively.
Extent : 14,685 sqm Carport area encroaching 1,5m street building line ;
9,790m carport width in lue of 6,5m ;
1 parking bay in lue of 3 provided.
- (b) Conduct of person involved in contravention :
The building work was commenced since approved plans were obtained, little knowing that the "plan approval" was for another property.
On receiving notice to obtain written approval , I started proceedings for the necessary plans to be submitted for approval.
- (c) The unlawful conduct has not stopped.
- (d) I never before contravened any By-Laws or Planning laws.

TRUST COUNCIL FINDS THIS IN ORDER.



pp K.COETZEE

20/09/2019

DATE

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sectional elevation A

1 inch = 10 feet

1955

J. H. Smith

COIT
HOLIFORD

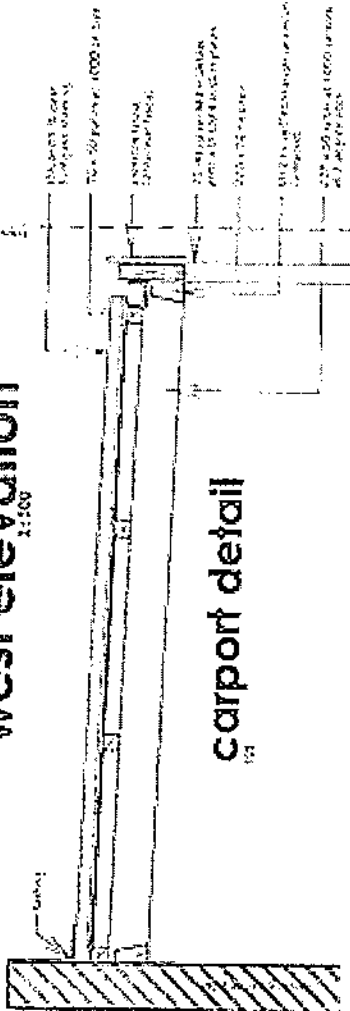
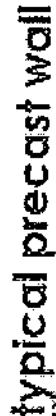


Figure 1. A schematic diagram of the experimental setup. The subject is seated in a chair, viewing a screen. The screen displays a target (a small circle) and a starting point (a larger circle). The subject's hand is positioned at the starting point. The distance between the starting point and the target is labeled as d . The distance between the starting point and the screen is labeled as L . The distance between the target and the screen is labeled as d_s . The distance between the starting point and the target is labeled as d . The distance between the starting point and the screen is labeled as L . The distance between the target and the screen is labeled as d_s .

[illegible][illegible]

FOR MR & MRS B COETZER

JANUARY 2017

31.890

Erf 2868
AYONDALE, PAROW

15.740

15,740

5 FRIESTLAND CRESCENT

**PROPOSED EXTENSIONS & ALTERATIONS^{project}
ON ERF 2868, 5 FRIESLAND CRESCENT
AVONDALE, PAROW**

calculations

FOR MR & MRS P. FREDERICKS

[illegible]

June 2017

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT


TDA
 CAPE TOWN

 The City of Cape Town's Transport
 and Urban Development Authority

 Enquiries: L Campher
 Tel: 021 444 7855

Reference: 479/2017

PERSON/REGISTERED OWNER OF PROPERTY	William & Kobarinda Coetzee		
ADDRESS	122 Cambridge Straat Richmond Estate		
	Goodwood		
ID NO/REG NR	570321 0116 004	DATE	9 October 2017

NOTICE TO OBTAIN WRITTEN APPROVAL FOR THE UNAUTHORISED BUILDING WORK

An inspection conducted on 15/09/2017 revealed that you are in the process / have erected a building on Erf No 4544 at 122 Cambridge Street Richmond Estate

The work being a Carport and Alterations to dwelling in the area of the City of Cape Town (being the local authority in question) which is in contravention of Section 4(1) read with Section 4(4) of the National Building Regulations and Building Standards Act No 103 of 1977 (the Act), as no prior written approval for the erection of such building has been obtained from the said local authority.

(Please note: Plan no 70360912 presented to me by you is an approved plan for erf 2868 Friesland Crescent Avondale Parow and according to our records NO BUILDING PLAN APPLICATION HAS BEEN MADE FOR YOUR PROPERTY)

In terms of Section 4(1) of the Act, no person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this said Act.

In terms of Section 4(4) of the Act, any person erecting any building in contravention of the provisions of Section 4(1) shall be guilty of an offence.

Acting under delegated powers, I hereby order you in terms of Regulation A25 (10) of the National Building Regulations promulgated under Section 17(1) of the said Act, to obtain written approval for the said unauthorised building work, by submitting and having building plans approved within 60 days from the date the recipient signed for this notice (see below).

FAILURE TO COMPLY WITH THIS NOTICE CONSTITUTES A CRIMINAL OFFENCE IN TERMS OF REGULATION A25(11) OF THE NATIONAL BUILDING REGULATIONS. The City of Cape Town may, without further notice, institute legal proceedings against you.

The submission of building plans in compliance with this notice does not place any obligation on the City of Cape Town to approve such building plans for the building work set out above. Should written approval not be granted, you will be required to either rectify or demolish the abovementioned unauthorised building work.

SIGNED: (Delegated Official)		Leon Campher		ADDRESS (Address of)	As above
SERVED:	DATE:	30/10/17		TIME:	13h10
SERVER:	NAME:	Leon Campher		SIGN:	<i>[Signature]</i>
RECIPIENT:	NAME:			SIGN:	

SECTION F: MOTIVATION TO SECTION 129(8) OF THE MUNICIPAL PLANNING BY-LAW

480

Give a description of the land use or structure(s) / building work that are in contravention on the property.

CARPORT, PARKINGProvide the extent(s) in m² of the property used for the unlawful use activity, and unlawful building work / structure(s) that contravene the MPBL. (Indicate extent(s) on a building plan / map / plan / diagram)**CARPORT 14,685 sqm, 1 parking in lieu of 3.**

Provide explanatory motivation addressing the circumstances in which the land use or structure(s) / building work has occurred.

DEE MOTIVATION REPORT

Describe the duration of the contravention(s).

FROM SEPTEMBER 2017 UNTIL CURRENTHas the unlawful activity ceased? ☒ ☐

If yes, provide the date when the activity ceased

D D M M Y Y Y YHas the owner / person previously contravened the MPBL, or a previous Planning Law? ☒ ☐

If yes, please provide more details below.

Provide the municipal valuation of the erf.

R

State and provide supporting documentation for your determination of the value of the unauthorised building work / structures or land use that is in contravention of the MPBL.

R

SECTION G: DECLARATION

I/we hereby wish to confirm the following:

1. That the information contained in this application form and accompanying documentation is complete and correct.
2. That I/we am/are properly authorised to make this application on behalf of the owner and (where applicable) that copies of such full relevant powers of attorney are attached hereto.*
3. That where an agent is indeed appointed to submit this application on the owner's behalf, it is accepted that correspondence and formal notification as required in terms of Planning law will only be sent to such consultant / agent and that the owner will regularly consult with the agent / consultant in this regard.
4. That this submission includes all necessary planning applications required to enable the development proposed herein. I/we specifically confirm that I/we have read the relevant title deed(s) or the attached conveyancer certificate. I/we confirm that there are no restrictive conditions which impact on the this application, or alternatively where there are applications for the removal / amendment / suspension of these or consent required in terms of a title deed condition, form part of the submission.
5. I/we am/are aware that by lodging an application, the information in the application and obtained during the process may be made available to the public.
6. That where the proposal involves existing building work erected and / or used in contravention of the development management scheme, that I/we have consulted with the Section Head: Land Use Management for the applicable area to ensure the correct application in terms of Planning law is being made. I/we confirm that I/we have not been served with a demolition directive in terms of section 128 (1) (b) (ii) of the MPBL on the property.
7. That, as owner / applicant / developer, I am/we are aware of the state of existing bulk services provision and infrastructure availability in the subject area and any development contributions that might be payable in respect of the development proposed herein (if applicable).
8. The email address and cell number provided on this form is to be used by the City to communicate when there is correspondence relating to the application(s) for my attention that will be available through e-Services. If my email address or cell number changes, I/we will notify the Corporate Call Centre on 0860 103 089 to update my/our business partner details.

If the application is made by a person other than the registered owner(s) (e.g. an agent / consultant) the requirements in terms of section 71(1)(b) of the MPBL must be adhered to.

Registered owner's signature

Date

2 3 0 9 2 0 1 9

Full name and surname

KOBARINDA GOETZEE

Registered owner's signature

Date

D D M M Y Y Y Y

Full name and surname

Applicant / Agent's signature

Date

2 3 0 9 2 0 1 9

Full name and surname

ERIC LOMBARD

Professional capacity

PROF ARCH DRAUGHTSPERSON

Applicant's ref

D2438

Annexure

E

Copy of the notice served

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT



TDA
CAPE TOWN

The City of Cape Town's Transport
and Urban Development Authority

Enquiries: L Campher
Tel: 021 444 7855

Reference: <http://www.who.int/mediacentre/factsheets/fs104/en/>

PERSON/REGISTERED OWNER OF PROPERTY	William & Kobarinda Coetzee		
ADDRESS	122 Cambridge Straat Richmond Estate		
	Goodwood		
ID NO/REG NR	570321 0116 004	DATE	9 October 2017

NOTICE TO OBTAIN WRITTEN APPROVAL FOR THE UNAUTHORISED
BUILDING WORK

An inspection conducted on 15/09/2017 revealed that you are in the process / have erected a building on Eri No 4544 at 122 Cambridge Street Richmond Estate

The work being a Carport and Alterations to dwelling in the area of the City of Cape Town (being the local authority in question) which is in contravention of Section 4(1) read with Section 4(4) of the National Building Regulations and Building Standards Act No 103 of 1977 (the Act), as no prior written approval for the erection of such building has been obtained from the said local authority.

(Please note: Plan no 70360912 presented to me by you is an approved plan for erf 2868 Friesland Crescent Avondale Parow and according to our records NO BUILDING PLAN APPLICATION HAS BEEN MADE FOR YOUR PROPERTY)

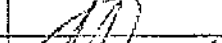
In terms of Section 4(f) of the Act, no person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this said Act.

In terms of Section 4(4) of the Act, any person erecting any building in contravention of the provisions of Section 4(1) shall be guilty of an offence.

Acting under delegated powers, I hereby order you in terms of Regulation A25 (10) of the National Building Regulations promulgated under Section 17(1) of the said Act, to obtain written approval for the said unauthorised building work, by submitting and having building plans approved within 60 days from the date the recipient signed for this notice (see below).

FAILURE TO COMPLY WITH THIS NOTICE CONSTITUTES A CRIMINAL OFFENCE IN TERMS OF REGULATION A25(11) OF THE NATIONAL BUILDING REGULATIONS. The City of Cape Town may, without further notice, institute legal proceedings against you.

The submission of building plans in compliance with this notice does not place any obligation on the City of Cape Town to approve such building plans for the building work set out above. Should written approval not be granted, you will be required to either rectify or demolish the abovementioned unauthorised building work.

SIGNED: (Delegated Official)		Leon Campher	ADDRESS (Where served)	as above
SERVED:	DATE:	8/10/17	TIME:	13410
SERVER:	NAME:	Leon Campher	SIGN:	
RECIPIENT:	NAME:		SIGN:	

Annexure

F

Comment from building plan process



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

484 DEVELOPMENT MANAGEMENT

Neil Craig September
Clerk: Technical Assistant

T 0214447945

E: neilcraig.september@capetown.gov.za

Case ID: 70460448

BDML005

05 July 2019

Eric Lombard
Umthislot 10
Glenwood
7460

Dear Sir / Madam

ERF 4544, GOODWOOD, PROPOSED APPLICATION FOR: Building Plan < 500m2

Dear Applicant, please note that your BDM Case 70460448 has not been cleared. Refer to Clearance Requirements.

Reason for alternative: Not Cleared

The proposed parking 1 and 2 is not practical as the parking goes beyond the property boundary. The applicant is advised to make an application for parking departure together with all the other departures required on the property.

Council's aerial photography has revealed that the proposed carport on the street boundary already exists on the property. Therefore, the applicant needs to make an application for the determination of an administrative penalty at the Land Use Management department.

For any further queries please contact Thuthula Mazana on 021 444 7516

Yours faithfully

Neil Craig September
for **DIRECTOR : DEVELOPMENT MANAGEMENT**