



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70520748
CASE OFFICER	Silulami Kanzi
CASE OFFICER PHONE NO	021 684 4372
DISTRICT	Cape Flats
REPORT DATE	13 August 2020

ITEM NO MPTSW17/11/2020

WARD 66: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 206, 86 Peninsula Road, Zeekoevlei.

1. EXECUTIVE SUMMARY

Property description	Erf 206, Zeekoevlei
Property address	86 Peninsula Road, Zeekoevlei
Site extent	701m ²
Current zoning	Single Residential 1
Current land use	Dwelling house
Overlay zone applicable	None
Submission date	07-10-2020
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes – unauthorised building work in the form of out-door toilet, verandah and a carport
Has owner applied for the determination of an administrative penalty	Yes
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 applied for.	No
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

2. DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3. BACKGROUND / SITE HISTORY

Erf 206, Zeekoevlei is located at 86 Peninsula Road. The property is currently zoned Single Residential in terms of the Development Management Scheme ("DMS"). The DMS unauthorised building work measures approximately 31.98m² in extent and is used as a toilet, a portion of the verandah and carport. The out-door toilet and the verandah are located within the prescribed 3m common building line, and the carport within the 5m street building line, therefore these structures contravene item 22(d) of the DMS.

4. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is attached as Annexure C and may be summarised as follows:

- The owner has constructed the out-door toilet during the Covid- 19 lockdown with the intentions of preventing people from using the main bathroom inside the dwelling.
- The out-door toilet was built approximately 7 months ago, the verandah and the carport in 2017 and 2018.
- The owner has not previously contravened the MPBL.

5. ASSESSMENT OF APPLICATION

- 5.1. As indicated above, the unauthorized building work is in contravention of the Development Management Scheme.
- 5.2. In terms of section 129(7)(a) of the By-Law, an administrative penalty for a building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.
- 5.3. **Administrative Penalty: Calculation for unauthorised building work**

Verandah

Value per m² x Total Unlawful Area (m²) = R

R1020 x 9.55m²= R9741.00

Carport

Value per m² x Total Unlawful Area (m²) = R

R1340 x 15.98m²= R21413.20

Out-Door Toilet

Value per m² x Total Unlawful Area (m²) = R

R5720 x 6.45m²= R36894.00

An amount which is not more than 100% of **R68 048.** may be imposed as an administrative penalty.

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

a) **The nature, duration, gravity and extent of the contravention**

Nature – Portion of the verandah, out-door toilet and carport contravene the DMS. The verandah and out-door toilet are located within the 3m common building lines, while the carport is located within the prescribed 5m street building line.

Duration – The out-door toilet was built approximately 7 months ago, while both the carport and the verandah were built on 2017 and 2018 (± 2 - 3 years).

Gravity – The contravention does not threaten the health, safety or wellbeing of the surrounding community. The gravity is therefore not considered serious.

Extent – The extent of the contravention is 31.98m².

b) **The conduct of the person involved in the contravention**

There is no evidence to prove that the owner of the property has previously contravened this By-law or any other planning law.

c) **Whether the unlawful conduct was stopped**

The unauthorized verandah, carport, and out-door toilet contravening the DMS is complete.

d) **Whether a person involved in the contravention has previously contravened this By-Law or any other planning law**

As far as it can be ascertained the current owner has not previously contravened this By-Law.

- 5.5. In view of the abovementioned considerations, this Department recommends that an administrative penalty of **R900** for the unauthorized building work be charged.

6. REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1. Portions of the carport, out-door toilet, and verandah contravene the DMS.
- 6.2. The applicant took the necessary steps to rectify the contravention.
- 6.3. Despite long duration and medium extent of the contravention, the gravity is not serious.
- 6.4. As far as it can be ascertained, the owner of the property has not previously contravened the Municipal Planning By-Law, 2015 or any other planning law.

7. RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R900** for the unauthorised building work in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 on erf 206, Zeekoevlei **be approved** in terms of section 98(b) of the City of Cape Town Municipal Planning By-Law, 2015.

ANNEXURES

Annexure A	Locality plan
Annexure B	Site development plan showing contravention
Annexure C	Applicants motivation



Section Head : Land Use Management

Name A McCann

Tel no 021 6844341

Date 26 October 2020

Comment

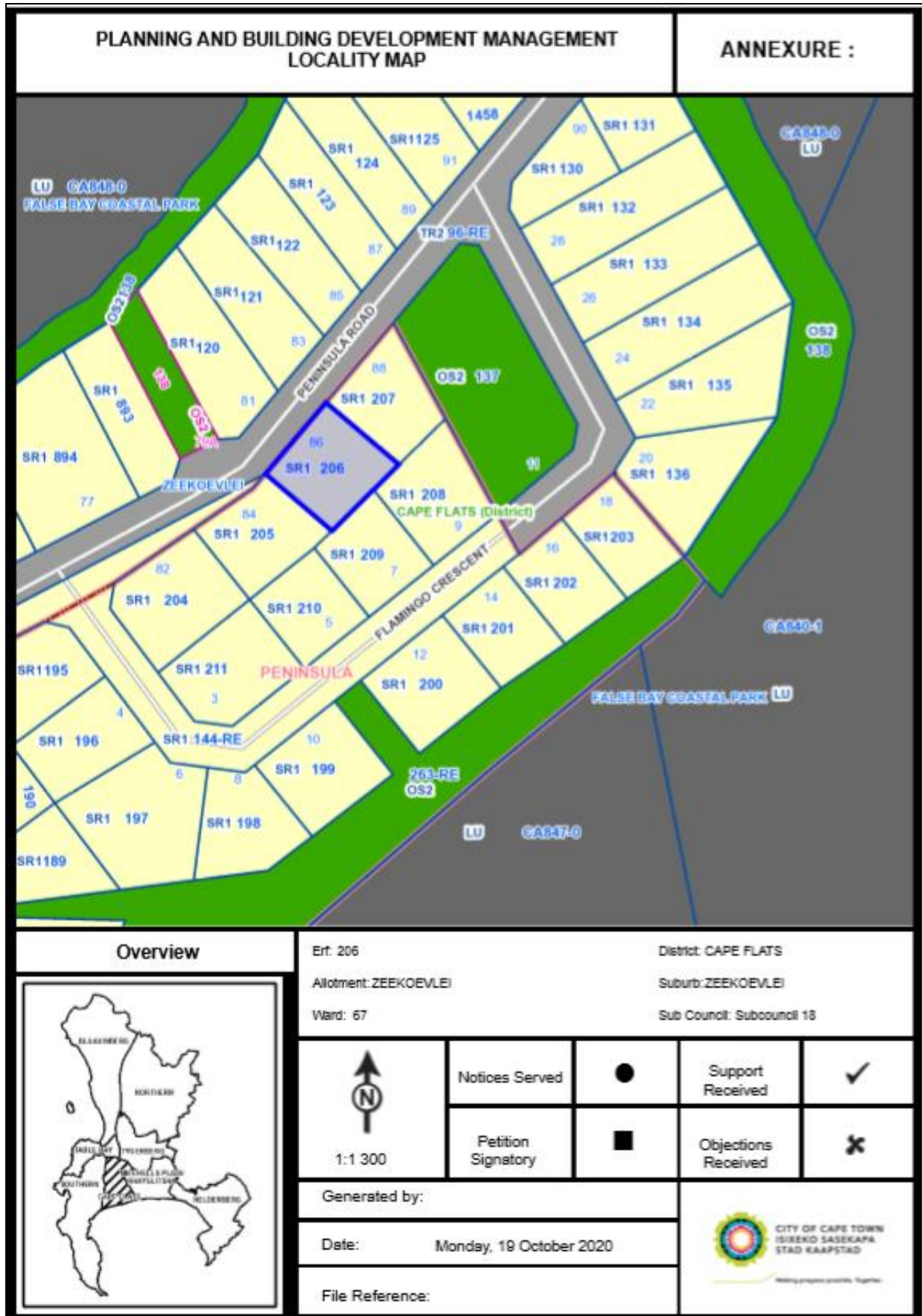


District ManagerName Chad Newman

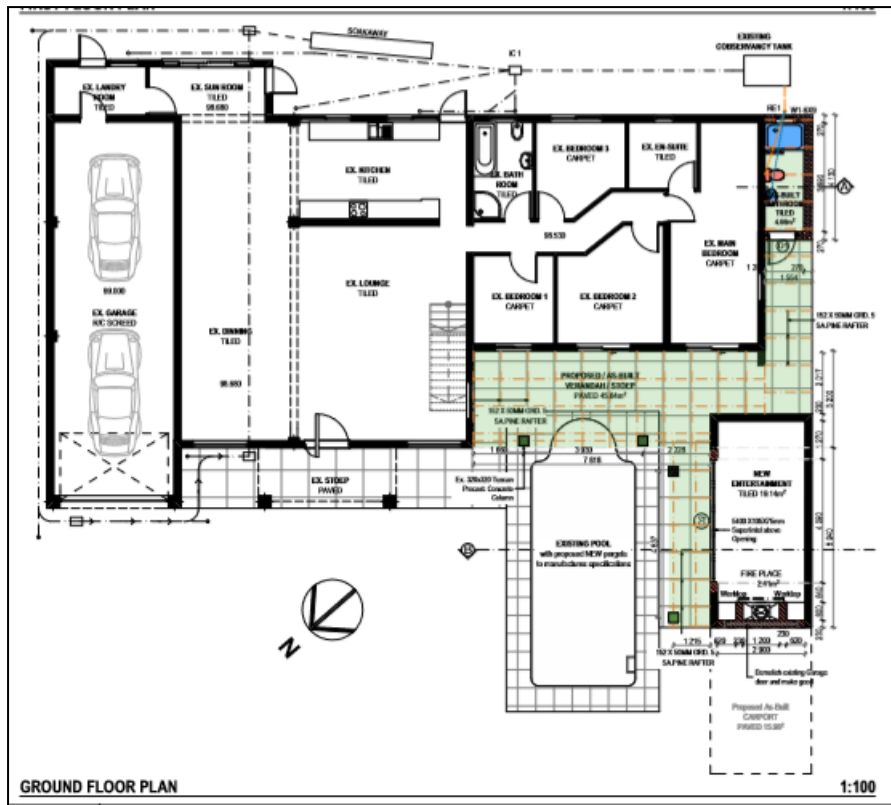
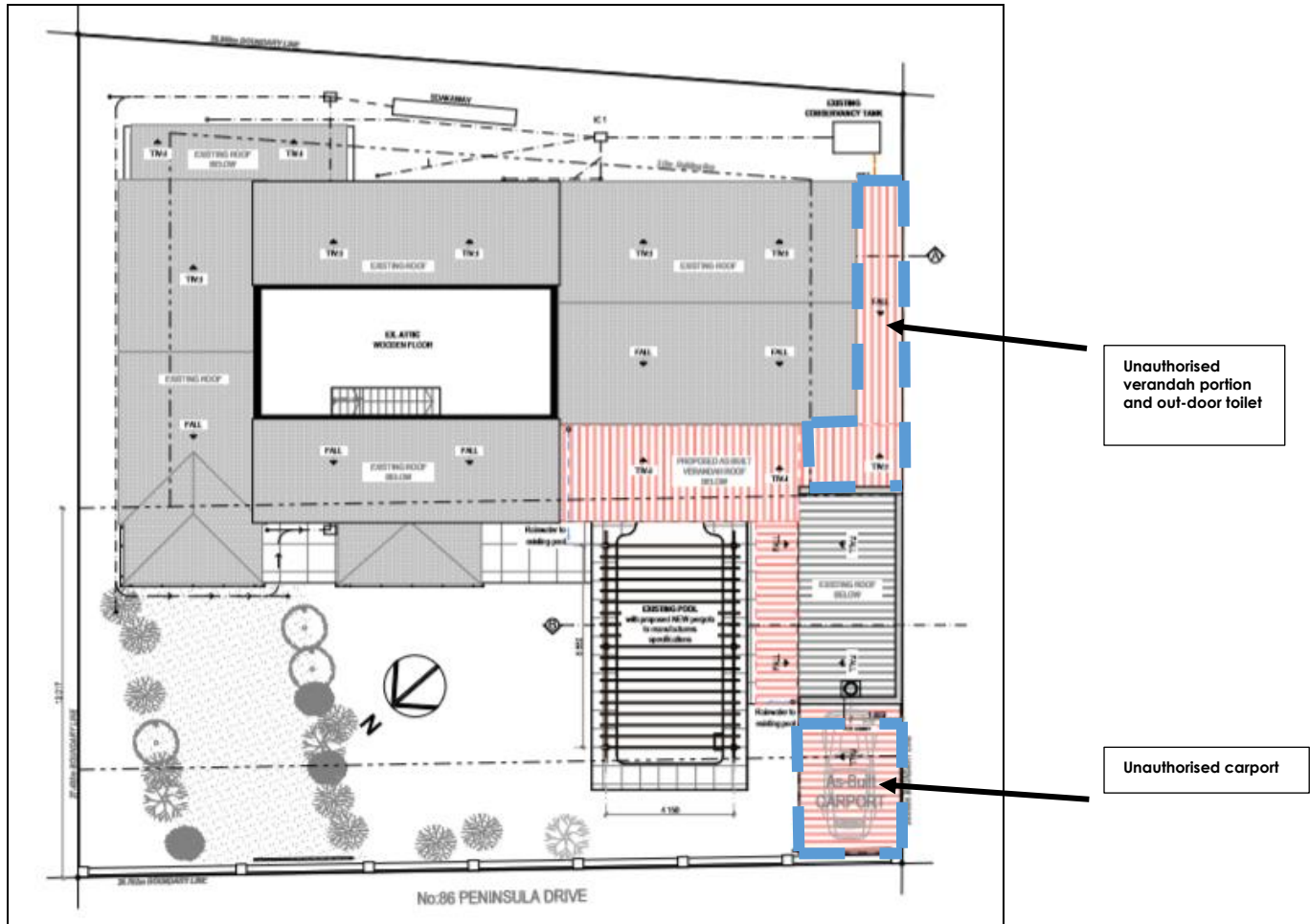
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Tel no 021 684 4310/082 254 1445Date 27 October 2020

ANNEXURE A: Locality



ANNEXURE B: Building Plans



ANNEXURE C: Owner's

Motivation

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

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

Brick masonry wall structure as per the attached drawings.

Provide 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)

A total 68.07sqm which consist of the following (6.45sqm Out-Door Toilet / 45.64sqm Verandah and 15.98sqm Carport)

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

The toilet was building during the current covid-19 pandemic, this preventing people to use main bathrooms/Toilet

Describe the duration of the contravention(s).

The toilet was constructed in March 2020. Verandah and Carport during 2017 and 2018

Has the unlawful activity ceased?

☒ N

If yes, provide the date when the activity ceased

Has the owner / person previously contravened the MPBL, or a previous Planning Law?

☐ Y ☒ N

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.

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