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REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70468523			
CASE OFFICER	QUANTAH SAVAHL			
CASE OFFICER PHONE NO	021 684 4348			
DISTRICT	CAPE FLATS			
REPORT DATE	2019-10-29			
INTERVIEW REQUESTED	APPLICANT	YES		NO
	OBJECTOR(S)			

ITEM NO **MPTSW66/11/19**

**WARD 67: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 2507 PELIKAN PARK, 8 YUNUS STREET, EAGLE PARK**

**1 EXECUTIVE SUMMARY**

Property description	Erf 2507 Pelikan Park
Property address	8 Yunus Street, Eagle Park
Site extent	73m <sup>2</sup>
Current zoning	Single Residential 2
Current land use	Residential - Dwelling House
Overlay zone applicable	None
Submission date	19 September 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, unauthorised building work.
Has owner applied for the determination of an administrative penalty	Yes, the Administrative Penalty must still be determined.
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	Yes, the Building Inspector served a Notice on 12 July 2019.

the unlawful land use or building work which required the owner or other person to apply for the determination of an administrative penalty?	2942
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## 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

## 3 BACKGROUND / SITE HISTORY

The property is zoned Single Residential 2 in terms of the Development Management Scheme (DMS). In terms of Item 27(c) of the DMS, buildings are allowed 1m from the street boundary. As a result a portion of the garage contravenes the street boundary building line.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

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

- RDP dwelling with a floor area of only 23 square meters.
- Garage is fully built and functional.
- Only the walls of the kitchen area were built with no windows, doors or roof and the structure is not habitable.
- Duration of the contravention was 12/03/2018 – 27/05/2019.
- Was unaware that a building plan was required for extension to an RDP house.
- Only found out after building that a building plan was required.
- Building work stopped at that stage.
- Was served with a Notice for illegal work.

## 5 ASSESSMENT OF APPLICATION

5.1 As indicated above, the unauthorised 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.

### Administrative Penalty: Calculation

5.2.1 Unauthorised building work

$$\text{Value per m}^2 \text{ (as provided in the spreadsheet)} \times \text{Total Unlawful area (m}^2\text{)} = R$$

Value per m <sup>2</sup>	2943	=	R 5,720,00
Total Unlawful area (garage)		=	6,36m <sup>2</sup>
Calculated value (Value x Area)		=	R36 379,20

An amount which is not more than 100% of R36 379,20 may be imposed as administrative penalty.

- 5.3 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 – A portion of the garage contravenes the development rules in the Single Residential 2 zone in that it contravenes the 1m street building line.

Duration – The owners have indicated that the duration is from March 2018. However, aerial photography indicates that the garage was in existence from at least January 2018.

Gravity - The contravention does not appear to pose a hazard in terms of safety, fire or health.

Extent – The portion of garage which contravenes the DMS is 6,36m<sup>2</sup> in extent.

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

The unauthorised structure was built by the current owners.

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

The unauthorised structure was constructed prior to the submission of a building plan and exists.

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

As far as can be ascertained, the current owners of the property have not previously contravened this By-Law or any other planning law.

- 5.4 In view of the abovementioned considerations this Department recommends that an administrative penalty to the value of R400 be imposed.

## 6 REASONS FOR DECISION

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Reasons for the recommended decision may be summarised as follows:

- 6.1 The contravention is considered to be small in extent; the gravity is not serious and the duration is considered to be of a medium duration.
- 6.2 The unauthorised building work was carried out by the current owners.
- 6.3 The owners have misrepresented the duration of the contravention.
- 6.4 As far as can be ascertained the owners of the property have not previously contravened the Municipal Planning By-Law 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 R400 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 2507 Pelikan Park.

## ANNEXURES

Annexure A-A1	Regional and Locality Maps
Annexure B	Plan of Contravention
Annexure C	Applicant's motivation



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**Section Head : Land Use  
Management**

Name A McCann

Tel no 021 6844341

Date 1 November 2019

Comment

None

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**District Manager**

Name Chad Newman

Tel no 021 684 4310

Date 5 November 2019

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Comment

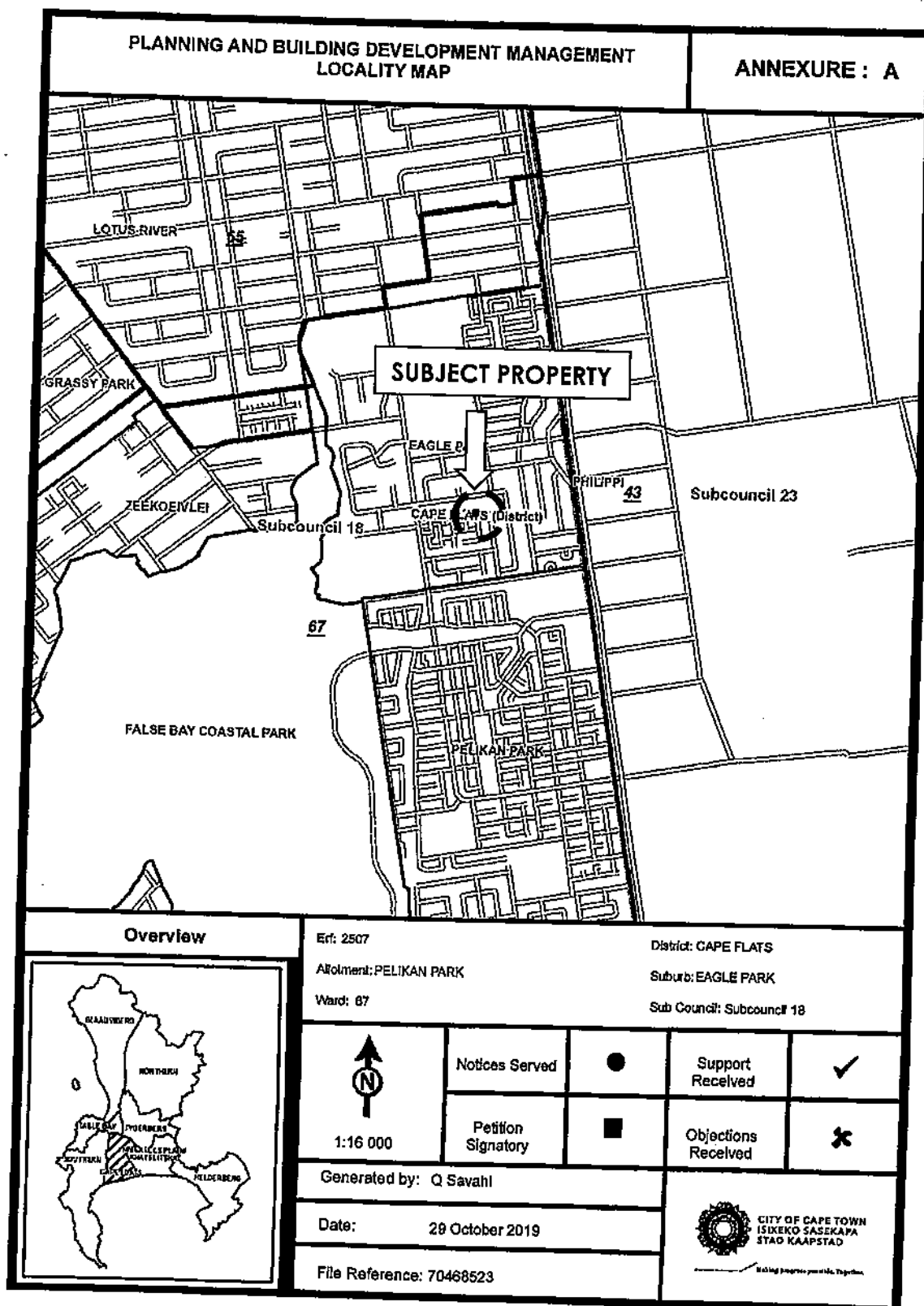
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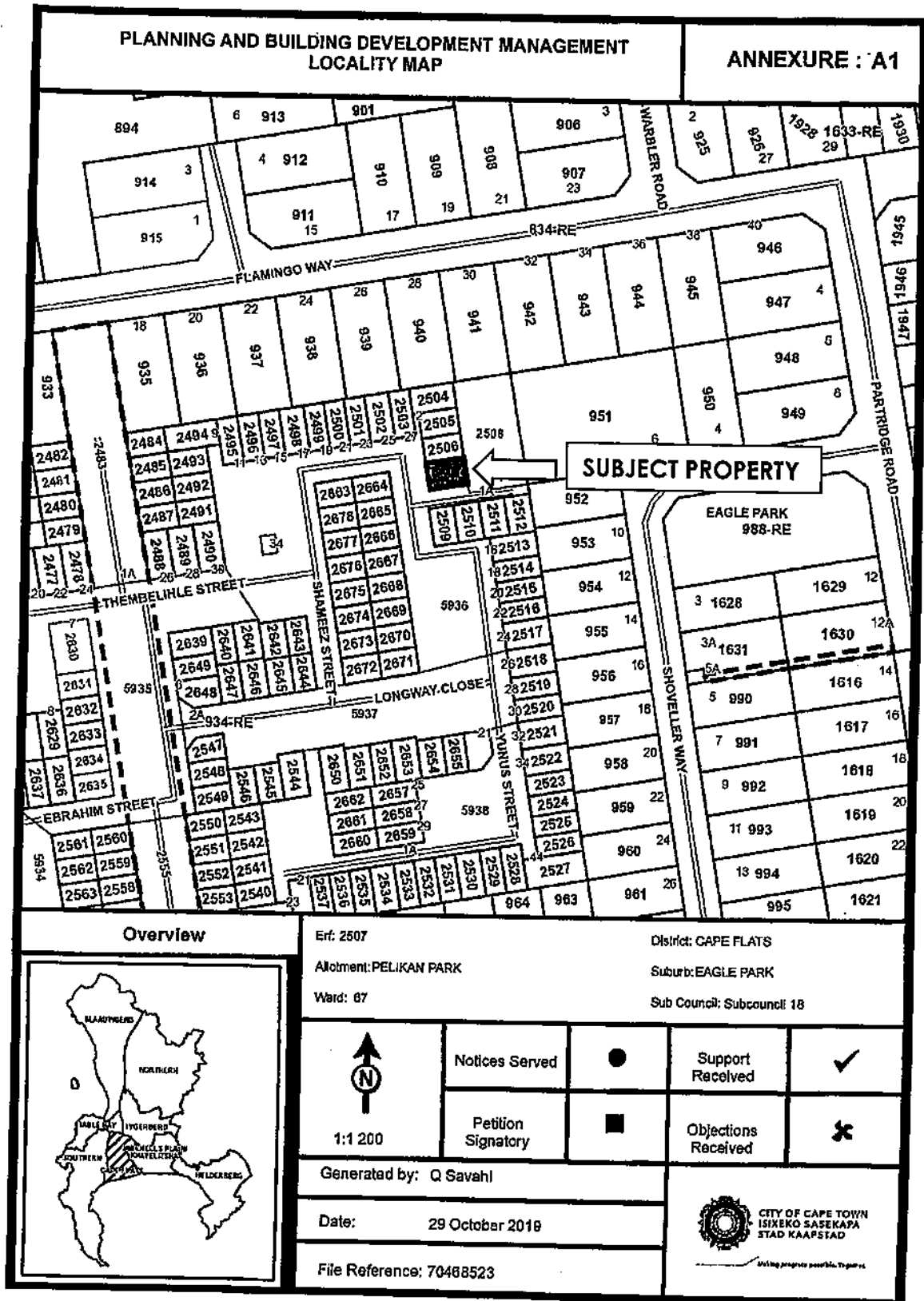
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# ANNEXURE A-A1 REGIONAL & LOCALITY MAPS

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## ANNEXURE B APPLICANT'S MOTIVATION

Enquiries: Daniel and Patricia Beck  
Telephone:

8 Yunus Street  
Eagle Park

Plan No: DPB/01/07/19/SH01

August 2019

Case ID 70468523

### MOTIVATION FOR THE APPLICATION FOR SECTION 42(R) - ADMINISTRATIVE PENALTY FOR ILLEGAL BUILDING WORK ON ERF 2705.

1. I hereby make application for the contravention on ERF 2507 Eagle Park Pelican Park for the illegal building work (extension to existing building – kitchen and garage).
2. We were fortunate to be handed this RDP dwelling with a floor area of only 23 square meters. It consists of a two storey building with two bedrooms on the first floor and a living area plus a tiny bathroom on the ground floor. It has no kitchen only a sink placed in a corner.
3. Due to the current economic climate in the Western Cape, it is not possible for my family members to afford buying their own homes. The only way to assist them is to extend on the existing property to try and make it more conducive to live as a family.
4. The only convenient proposal that would meet some of the requirements would be to have a kitchen, however small and a garage to have a parked car for security reasons and to make the property safe and attempt to protect my assets.
5. With the Erf area of only a mere 72.5 sqm, I extended the property by building a kitchen on the eastern boundary (7.22sqm) and a garage on the southern boundary (21.5sqm). By doing this extension I was able to enclose the perimeter of my property to increase the living area as well as for safety reasons.
6. The extend of the renovations is that the garage is fully built and functional. As for the rest of the extensions only the walls of the kitchen area were built with no windows, doors or roof and the structure is not habitable.
7. The duration of the contravention was 12/03/2018 – 27/05/2019.
8. The proposed extensions will not impact negatively on the immediate neighbours, as most of them have similar problems.
9. I will attach a drawing plan to support my application.
10. I was unaware that I would require a building plan for the extensions (RDP house). The garage was constructed with concrete vibracrete fencing it was only brought to my attention after I started with the block work was I informed that I would require a building plan. At that stage I stopped with the building work, however I was still served with a notice for illegal work and that a building plan was to be submitted to have the illegal work approved.
11. Therefore, I humbly request the approval of this application.

Daniel Kelly Beck and Patricia Beck  
(560328 5154 080) (631015 0262 084)



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