



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

SUPPLEMENTARY REPORT TO MUNICIPAL PLANNING TRIBUNAL

Case ID	70466160
Case Officer	Juan Sadan
Case Officer phone number	021 400 6609
District	Table Bay
Ward	53
Ward Councillor	Brian Watkyns
Report date	September 2019

** The supplementary report is drafted in light of further actions by the applicant/owner in respect of unauthorised building work. For expediency and clarity, all additional insertions to the supplementary MPT report will be highlighted in bold italics. Elsewhere information has been struck-through.*

WARD 53: APPLICATION FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY IN TERMS OF SECTION 42(r) OF THE CAPE TOWN MUNICIPAL PLANNING BY LAW, 2015: ERF 911 CAPE TOWN AT PINELANDS, 79 FORREST DRIVE SERVICE ROAD.

1 EXECUTIVE SUMMARY

Site extent	1395m ²
Current zoning	Single Residential zoning 1 (SR1)
Current land use	Dwelling House
Submission date	31.07.2019
<u>Penalty for unauthorised building work?</u>	<p>Yes, unauthorised building work relates to:</p> <ul style="list-style-type: none">(a) the staircase and kitchen encroaching the 3m building line,(b) the garage encroaching the 5m street building line, and(c) The unauthorised additions are to a property in a HPOZ. <p><i>Certain and recent changes have been made to the boundary wall as well and have not been included in the current administrative penalty</i></p>

	<i>application. Given the location of the property in a HPOZ, the boundary wall would have to be the subject of further land use and administrative penalty applications.</i>
City Manager Application or Owner	The property owner has applied for the determination of an administrative penalty.
Notice Served?	<p>Yes, cease work notices were served calling for:</p> <p>(a) On 10 September 2018 to –</p> <ul style="list-style-type: none"> - cease work on site, and - obtain written approval <p>(b) On 15 January 2019 to –</p> <ul style="list-style-type: none"> - cease work on site, and - obtain written approval <p>Due to non-compliance with the notices, an interdict was obtained. The resultant Court Order # restrains the owner from undertaking any further building work or occupying the property.</p> <p><i>In spite of the above, the applicant/owner continued to undertake building work on the property. This prompted the City to launch a further and urgent (contempt of court) application to the Western Cape High Court in September 2019 (and subsequent to completion of the 30 August 2019 administrative penalty report to the MPT). In fact, despite this urgent (contempt of court) application the applicant/owner was still busy with building works at the property. (Details are contained in the attached Annexure F.)</i></p> <p>Copies of notices are attached in Annexure D while a copy of the time-line is attached as Annexure F.</p>

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND

3.1 An application to permit building work within the Heritage Protection Overlay Zone was approved in November 2018. The application only related to permission received in terms of the Municipal Planning By-law (MPBL).

The aforementioned submission has, as yet, not received approval in terms of the National Building Regulations which would enable building work to commence on-site.

That building plan could not be considered in terms of the NBR as further unauthorised construction occurred on-site. The aforementioned unauthorised

building work triggers the need for additional permissions which are required in terms of the MPBL.

4. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation of the proposal (see Annexure C) may be summarised as follows (two motivations are attached to this case, each of which address different aspects of the application):

- The alterations are to provide a suitable home for his family.
- The encroachment of kitchen and staircase has no impact on the road facing elevations and no formal objections have been received by surrounding neighbours.
- The new garage will have no impact on traffic as the entrance gate is on Forest Drive Service Road.
- The property adds more value to the area.
- This project would create employment.
- The proposal increases greenery/landscaping.
- The property would conform to the norms and standards in the area.
- The additions and alterations are to an existing dwelling house.
- Works commenced in September 2018 and all works ceased on 15/03/2019.
- No objection letters were obtained for the HPOZ and departures.
- The garage encroachment is to secure the cars.
- The staircase and kitchen encroachments are minor.
- The owner acknowledges and accepts responsibility for erecting the unauthorised building work. All works have been stopped and the necessary steps are being taken to obtain approval.
- This is the first time the owner has conducted unlawful building work.

5 ASSESSMENT OF APPLICATION

- 5.1 The unauthorized additions contravene the building line and HPOZ requirements of the DMS. Applications are required for departures and City Approval.

Additionally, three (3) outbuildings exist that were constructed prior to the current owner purchasing the property (these, according to the owner, will be demolished). Aerial photography confirmed this.

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

Administrative Penalty: Calculation

- 5.3.1 The applicant has provided no professional quotation for the unauthorised building work but provided his own calculations. However, these calculations did not include all relevant unauthorised building work. Despite numerous requests, further information has not been forthcoming.
- 5.3.2 As a result of the above, this department has had to make its own determination in respect of the full extent of unauthorised work that has taken place.

5.3.3 In the absence of a valuation of the cost of unauthorised work, this department used the standard building contraventions costs as attached to the City's Standard Operating Procedure for unauthorised building work. The unauthorised building work comprises:

- North eastern common boundary encroachments of approximately 43.36m² (on the ground and the first floor),
- Windows and doors approximately 147.34m²,
- *Outbuildings: approximately 50.56m² (While the owner has undertaken to demolish these structures an interdict prevents building work on the property)*

5.3.4 The costs indicated in the City's Standard Operating Procedure spreadsheet of "building works value" indicates that:

$$\begin{aligned}
 &7060 \text{ (as provided in the spreadsheet)} \times 190.7(\text{m}^2) = \text{R } 1\,346\,342.00 \\
 &7060 \text{ (as provided in the spreadsheet)} \times 50.56(\text{m}^2) = \text{R } 356\,953.60 \\
 &\textbf{\underline{Total}} \qquad \qquad \qquad \textbf{\underline{241.26(m}^2\text{) R } 1\,703\,295.60}}
 \end{aligned}$$

The administrative penalty may not exceed 100% of R 1 703 295.60.

The total extent of the unauthorised building work equals 241.26m².

5.4 As contemplated by section 129(8) of the By-Law the following factors need to be considered when determining an appropriate administrative penalty for building work contraventions:

129(8)(a)					
	Land Use		Building Work		
Nature			X		
Comment	The unauthorised building work triggers common boundary and street building line departures and City's approval to permit building work within an HPOZ in terms of the DMS and relates to structures which are permitted on a SR1 property. The unauthorised outbuildings indicated in Annexure B existed when the owner purchased the property – Council's aerial photography corroborates this. These also contravene the DMS.				
Duration	0-6months	6-12 months	12-18 months	18-24 months	24 months +
		X			Outbuildings
Comment:	The unauthorized building work initiated by the current owner was constructed in 2018. All The building work pertaining to this administrative penalty has been completed at the property . Additionally, the outbuildings were erected prior to the current owner acquiring ownership of the property in 2018.				
Extent	0-5m²	5-10m²	10-15m²	15-30m²	30m²+
					X
Comment:	The total extent of the contravention is approximately 241.26m² which amounts to nearly 17% of the property extent.				

Gravity	Safety	Fire	Health	Other	None
				X	
Comment:	The gravity of the contravention is serious since most of the unauthorised additions are visible from the surrounds and for the reasons explained below. This is despite the owner's comments regarding the encroachment being minor and letters of no objections having been obtained.				
129(8)(b)					
	Misleading			Forthcoming	
Conduct	X				
Comment:	<p>The administrative penalty application arose as a result of an initial inspection by the building inspector and the notices being served (as explained in the Executive Summary).</p> <p>The owner did not comply with the notices served by the building inspector. In fact, the owner disregarded the notices to the extent that an interdict had to be sought to prevent, both, occupation of the building and further work proceeding on the site. <i>(Details are provided in the Executive Summary.)</i></p> <p>While it may be debatable whether the owner was aware of the need for various approvals during the initial unauthorised building work, it is clear from various interactions with officials that the same arguments cannot be forwarded in respect of further unauthorised building work.</p> <p>Additionally, during the processing of both the administrative penalty application and the planning application, the extent of unauthorised building work was not revealed in full such as the window and door replacements, among others. This affected the department's ability to assess the effect in relation to the Section 129(8) of the MPBL. As a consequence, this department has had to make its own determination thereof as well.</p> <p><i>Additionally, the comments inserted in the Executive Summary explaining the applicant/owner's obdurate attitude by disregarding both the notices served as well a subsequent Court Order prohibiting building work on the property and preventing the owner from occupying the property.</i></p> <p><i>In fact, the applicant/owner's continued disregard persisted despite the City launching an urgent (contempt of court) application.</i></p> <p><i>The attached document in Annexure F explains the time-line with respect to the unauthorised building work.</i></p>				
129(8)c					
	Yes		No		Building Work
Unlawful conduct ceased					X

Comment:	As explained, the unauthorised building work has been completed.	
129(8)d		
	Yes	No
Previous contraventions		X
Comment	While the owner may not originally have contravened the MPBL, he has wilfully done so through the repeated unauthorised deviations. The owner has previously contravened the MPBL with respect to the Erven 24313 and 24314, Maitland. An administrative penalty application is currently being processed relating to unauthorised building work on these individual properties while these properties are also being used in contravention of the DMS and MPBL.	

6. REASONS FOR DECISION

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

6.1.1 In so far as the unauthorised outbuildings which were constructed by a previous owner and which the current owner has undertaken to demolish, a zero administrative penalty is proposed.

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

6.2.1 The unauthorised building work was constructed without prior approval from Council and has been completed at the above-mentioned property.

6.2.2 The gravity is serious for the reasons stated above.

6.2.3 The extent of the contravention is large in relation to the extent of the building.

6.2.4 The owner wilfully contravened the MPBL by disregarding the notices to cease construction work.

6.2.5 Since the owner wilfully disregarded the notices, an interdict was sought to prevent occupation and further building work on the site. **In spite of this, building work persisted. As a result, the City launched an urgent (contempt of court) application although the owner was still busy with building work on the property.**

6.2.6 The owner has previously contravened the MPBL.

7. RECOMMENDATION

In view of the above, it is recommended that:

7.1 An administrative penalty of **R0** be determined in terms of Section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 911

Pinelands, 79 Forest Drive Service Road in respect of the outbuildings referred to in 5.1.1 above.

- 7.2** An administrative penalty of **R250,000.00** be determined in terms of Section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 911 Pinelands, 79 Forest Drive Service Road for other unauthorised building work initiated by the current owner.

ANNEXURES

Annexure A	Locality Plan
Annexure B	Site Development Plan / Contravention Plan
Annexure C	Applicant's Motivation
Annexure D	Copies of notices
Annexure E	Report to the MPT sign dated 30 August 2019
Annexure F	Time-line of contraventions



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23 September 2019
