



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

2506

## REPORT TO MUNICIPAL PLANNING TRIBUNAL

ITEM NO

**MPTSW41/11/19**

CASE ID	70476684
CASE OFFICER	L Hill (SJ)
CASE OFFICER PHONE NO	021 444 9543
DISTRICT	Southern
REPORT DATE	25/10/2019

**WARD 63: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 162997 CAPE TOWN AT WYNBERG, 60 BATTS ROAD**

### 1 EXECUTIVE SUMMARY

Property description	Erf 162997 Cape Town at Wynberg
Property address	60 Batts Road
Site extent	229m <sup>2</sup>
Current zoning	Single Residential Zone 1
Current land use	Dwelling house
Overlay zone applicable	None
Submission date	01/10/2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised building work in the form of a carport and covered yard.
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?	No

### 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal (MPT).

### 3 BACKGROUND / SITE HISTORY

- 3.1 An application for an administrative penalty was previously submitted in March 2019. The application was refused however due to the applicant's failure to timeously submit the additional information requested.
- 3.2 The required departure application relating to the unauthorised carport and covered yard has not yet been submitted.

### 4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The owner became unemployed in 2016 and started a business of driving children to school.
- The carport was built to protect the owner's assets / van.
- The carport was constructed due to space constraints and the yard was covered to have washing line space when it rains.
- The gravity is not large as the carport is not visible or obtrusive to the larger community.
- The builder assured the owner that there was no need for a building plan.
- The extent of the contravention is only 53,5m<sup>2</sup> on a property of 229m<sup>2</sup>.
- The remainder of the plot is used for residential purposes and the contravention constitutes only a small percentage of the value of the existing approved building.
- The conduct of the person who contravened was due to desperation and to make life easier for his wife.
- The owner was not aware that the conduct was unlawful.

### 5 ASSESSMENT OF APPLICATION

- 5.1 A portion of the carport contravenes Item 22(f)(ii) of the Development Management Scheme (DMS) in that has been setback 0m in lieu of 1.5m from the street. The covered yard contravenes Item 22 of the DMS in that the linear distance beyond 12m from the street exceeds 60%.
- 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 The value of building work contravention is based on the table of building values attached to the Standard Operating Procedure for Administrative Penalties and is calculated as follows:  
 Carport: R1330.00 x 5.8m<sup>2</sup> = R7714.00  
 Covered yard: R1330.00 x 6.4m<sup>2</sup> = R8512.00  
 Total: R16 226.00
- 5.4 An amount which is not more than 100% of R16 226.00 may be imposed as an administrative penalty.

- 5.5 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 - The nature of the contravention relates to the unauthorized carport and covered yard. This is ordinarily permitted in Single Residential Zone 1.

Duration - According to the applicant the unauthorized building work occurred in 2017. The duration of the contravention is moderate.

Gravity - The gravity is not serious when considering the nature of the building work. The sizes of the carport and covered yard are not of excessive and no parties are affected. The garage door is not unsightly and has little impact on the streetscape.

Extent - The extent of the contravention is small.

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

According to the applicant, the owner was told by the builder that there was no need to submit a building plan. The applicant also claims that the unauthorised additions were made as a result of desperation in order to protect his vehicle and make life easier for his wife. Even if this is the case, the owner is still responsible for the unauthorised building work. Ignorance of the law is not a valid excuse for breaking the law. The conduct of the owner cannot be condoned.

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

The unlawful conduct has not stopped.

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

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

- 5.6 In view of the abovementioned considerations, this Department recommends that an administrative penalty of **R1000.00** be imposed.

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarised as follows:

- 6.1 The carport and covered yard contravene Item 22 of the Development Management Scheme.
- 6.2 The duration of the contravention is moderate.
- 6.3 The gravity of the contravention is not serious.
- 6.4 The extent of the contravention is small.
- 6.5 The conduct of the owner cannot be condoned.
- 6.6 As far as can be ascertained, the owner of the property has not previously contravened this By-law or any other planning law.

## 7 RECOMMENDATION

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In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R1000.00** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 162997 Cape Town at Wynberg regarding the unauthorised carport and covered yard as shown on the plans attached as Annexure B.

### ANNEXURES

Annexure A      Locality map  
Annexure B      Site Development Plan  
Annexure C      Applicant's motivation



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**Section Head : Land Use Management**

Name      P Hoffa

Tel no      021 444 7724

Date      2019-10-25

Comment

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**District Manager**

Name      U Gonsalves

Tel no      021 444 7720

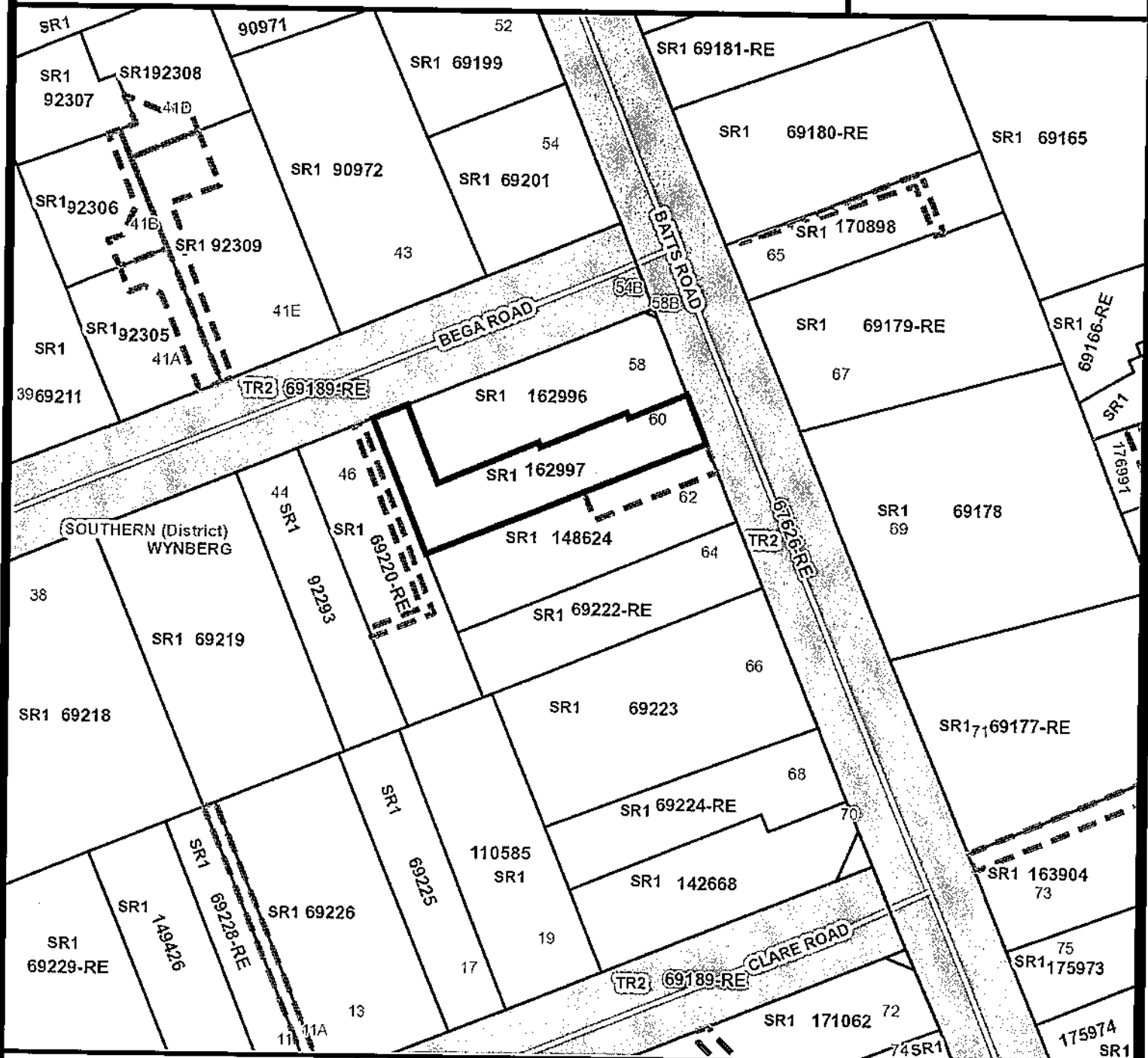
Date      2019-10-25

Comment

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**ANNEXURE : A**

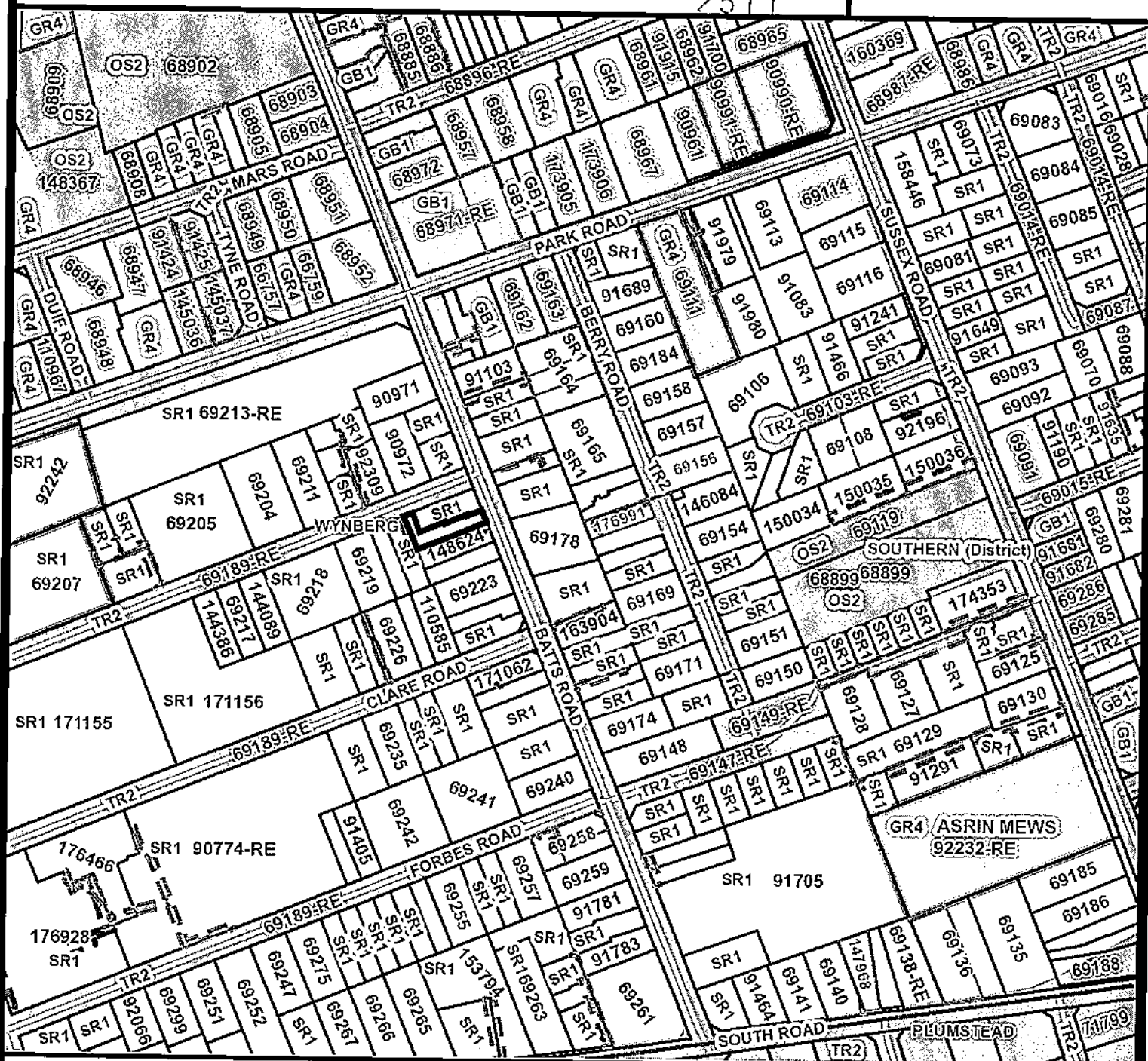


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# PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

ANNEXURE :

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## Overview

Erf: 162997

District: SOUTHERN

Allotment: CAPE TOWN

Suburb: WYNBERG

Ward: 63

Sub Council: Subcouncil 18



1:2 400

Notices Served



Support  
Received



Petition  
Signatory



Objections  
Received



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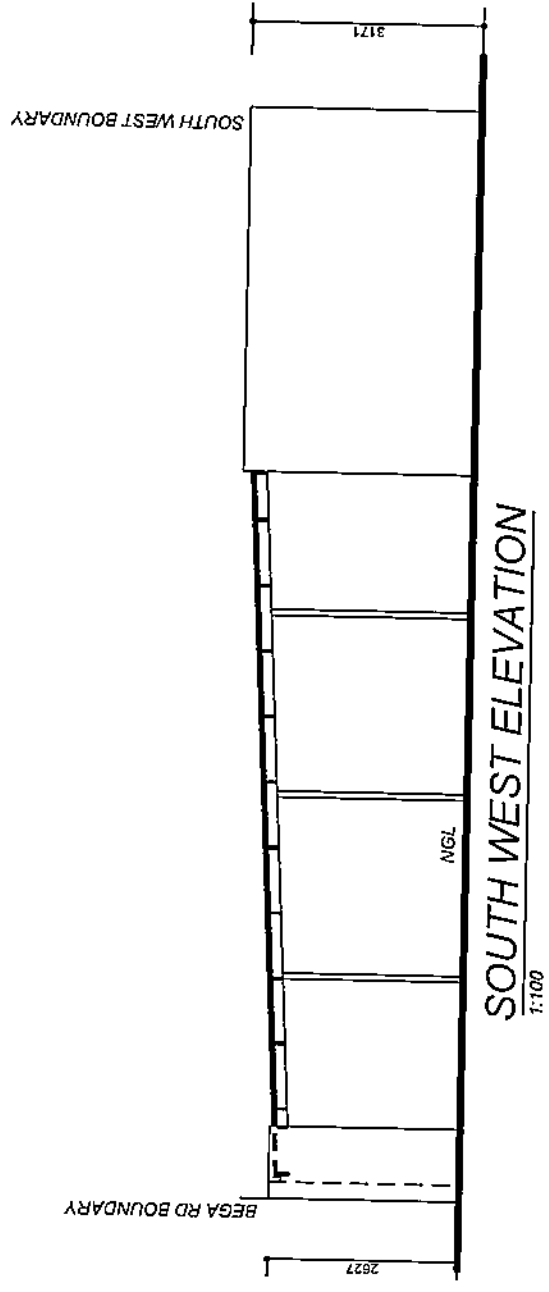


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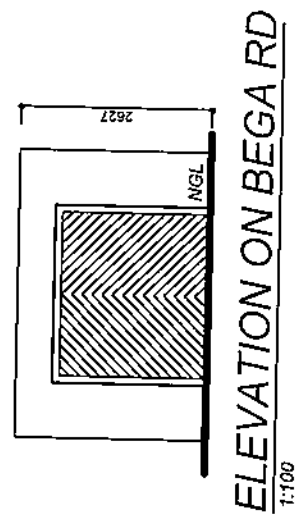
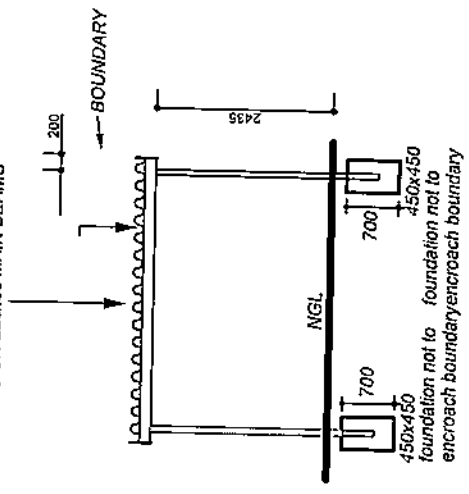
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85% TRANSLUCENT SHEET AT  
5 % SLOPE ON 150x50 RAFTER PURLINS  
AT 900 C/C ON 228x50 MAIN BEAMS





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## To Whom It may Concern

City of Cape Town  
Land Use management  
Plessey Building  
Plumstead

ERF 162997 WYNBERG : 60 BATTS ROAD

**MOTIVATION FOR ADMIN PENALTY APPLICATION**

Dear Sir/Madam

Please find my motivation for having to construct the carport without council approval.

I became unemployed in December 2016 and started driving school children. I required a covered parking space for my van. Thus I needed to build a carport in a hurry to protect my assets. The carport and covered yard was complete in Jan 2017

1. We constructed a carport and due to the space constraints we covered our yard just to have washing line space when it rains. We also did not consider it to be serious because the covered space was on our property and did not affect any neighbors. The carport was up since Jan 2017
2. The gravity of the offence is not considered as huge because the carport is not visible or obtrusive to the larger community. We did not consider the nature of the contravention to be of a serious nature and the builder assured us that we did not need a plan.
3. The extend of the contravention is only 53.5m<sup>2</sup> of the 229m<sup>2</sup> plot. The remainder of the plot is used for residential purposes and the contravention constitutes only a small percentage of the value of the existing approved building
4. The conduct of the person who contravened was due to desperation in order to protect his newly acquired asset and to make life easier for his spouse.
5. We were not aware that the conduct was unlawful but we could not stop because the structure is already in use.
6. The person who contravened the by law has never contravened any by law previously

We hope you consider our motivation favorably.

Yours truly

Mr Ridwaan Rejaldien

**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.

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Provide the extent(s) in m<sup>2</sup> 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)

6m2 covered area as highlighted on plan

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

my client needed to cover his van and thus he had to cover up to the boundary

Describe the duration of the contravention(s).

he started construction in 2017

Has the unlawful activity ceased? ☒ Y ☐ X

If yes, provide the date when the activity ceased

D D M M Y Y Y Y

Has the owner / person previously contravened the MPBL, or a previous Planning Law? ☒ Y ☐ X

If yes, please provide more details below.

Provide the municipal valuation of the erf.

R 1360 000 - 00

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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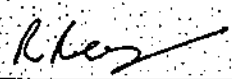
**SECTION G: DECLARATION**

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 3 0 0 9 2 0 1 9

Full name and surname


RIDWAAN REJALDIEN

Registered owner's signature

Date D D M M Y Y Y Y

Full name and surname

Applicant / Agent's signature



Date 3 0 0 9 2 0 1 9

Full name and surname

ACHMAT SALIE

Professional capacity

DRAFTSMAN

Applicant's ref