



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70533069				
CASE OFFICER	M. Wansbury				
CASE OFFICER PHONE NO	021 4444 630				
DISTRICT	HELDERBERG				
REPORT DATE	February 2021				
INTERVIEW REQUESTED	APPLICANT	YES		NO	x
	OBJECTOR(S)				x

ITEM NO MPTSE280221

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 157, STRAND AT 13 SALDANHA STREET

1 EXECUTIVE SUMMARY

Property description	Erf 157, Strand
Property address	13 Saldanha Street, Strand
Site extent	495m ²
Current zoning	Single Residential Zone 1 (SR1)
Current land use	Residential
Overlay zone applicable	None
Submission date	13/01/2021
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	<ul style="list-style-type: none"> - Unlawful covered entrance that exceeds the permissible height and size and encroaches the 3.5m street building line; - Unlawful garage that encroaches the 1.5m street building line; and - Unlawful covered stoep that encroaches the 3.0m common building line (adjacent to Erf 158).
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
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2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

- 3.1 Erf 157 (hereafter referred to as the subject property) is located at 13 Saldanha Street in the well-established, urban residential neighbourhood of Strand. The subject property is zoned Single Residential Zone 1 (SR1) in terms of the CoCT Development Management scheme, measures approximately 495m² in extent and developed with a single-storey detached dwelling and garages at lower floor level. The immediate surrounding area is characterized by a variety of mixed land uses, including single residential erven as well as multi-storey apartment blocks further south west along Beach Road.
- 3.2 The administrative penalty in this regard is for a covered entrance, carport and covered stoep that has been erected unlawfully (see further details under paragraph 5 "Assessment of Application"). For the purposes of this report, the covered carport will be referred to as a "garage" due to the enclosure of 3 sides.
- 3.3 The regularisation of the unlawful structures will be dealt with under delegated authority once the determination of the administrative penalty has been concluded.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- 4.1 The current owner admits that he is responsible for the unlawful structures erected on the subject property.
- 4.2 The owner immediately appointed an architect when informed that approved building plans are required.

5 ASSESSMENT OF APPLICATION

5.1 The unauthorized building work is in contravention of the Development Management Scheme in the following manner:

5.1.1 **Covered entrance:**

- Encroachment of the 3.5m street building line to 0m (Item 22(d) of the DMS);
- Roofed area exceeding 5m² (Item 121(1)(iv) of the DMS); and
- Roof height exceeding 3m (Item 121(1)(iv) of the DMS).

5.1.2 **Covered Stoep:**

- 0.46m² portion of the covered stoep encroaching the 3.0m common building line (adjacent to Erf 158) (Item 22(d) of the DMS).

5.1.3 **Garage:**

- Encroachment of the 1.5m street building line to 0m (Item 22(f)(ii) of the DMS);

5.3 Administrative Penalty: Calculation

5.3.1 Unauthorised building work (**covered entrance**):

$$\text{Value per m}^2 \text{ (R4 050.00)} \times \text{Total Unlawful area [8.74m}^2 \text{ (area) + 5.85m}^2 \text{ (height)}] = \text{R59 090.00}$$

5.3.2 Unauthorised building work (**covered stoep**):

$$\text{Value per m}^2 \text{ (R1 330.00)} \times \text{Total Unlawful area (0.46m}^2) = \text{R612.00}$$

5.3.3 Unauthorised building work (**garage**):

$$\text{Value per m}^2 \text{ (R5 720.00)} \times \text{Total Unlawful area (9.58m}^2) = \text{R54 798.00}$$

5.3.3 An amount which is not more than 100% of **R114 500.00** (R59 090.00 + R612.00 + R54 798.00) may be imposed as 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: The unlawful building work (namely a covered entrance, carport and covered stoep) is residential in nature.

Duration: The unlawful building work was constructed in 2018. This has been verified from aerial imagery.

Gravity: The contravention does not pose an adverse impact on safety, fire, health and or any other hazard. The proposed additions are common structures of residential nature and will not detract from the character of the area.

Extent: The total extent of the unlawful building work is approximately 24.63m².

b) The conduct of the person involved in the contravention

The current owner is responsible for the unauthorized building work. The owner as admitted to the transgression by submitting the relevant application for the determination of an administrative penalty. He thus has shown willingness to initiate the process to regularise the unlawful structures.

c) Whether the unlawful conduct was stopped

The unlawful building work has been completed.

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 ascertain, the current owner has not previously contravened this By-Law or any other planning law.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The current owner has admitted to the transgression by submitted the relevant application for the determination of an administrative penalty.
- 6.2 The gravity of the structure is considered not serious since it is ancillary to the main dwelling unit and pose no health and safety risk.
- 6.3 There is no record that the current owner previously contravened the MPBL or any other land use planning legislation.

7 RECOMMENDATION

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 98(b) of the City of Cape Town Municipal Planning By-Law, 2015 in respect of the unauthorised building work on Erf 157, Strand.

ANNEXURES

Annexure A Locality Plan
 Annexure B Building Plan
 Annexure C Applicant's motivation



**Section Head : Land Use
Management**

Comment

Name Jeanine Williams

Tel no 021 444 4623

Date 5 February 2021



District Manager

Comment

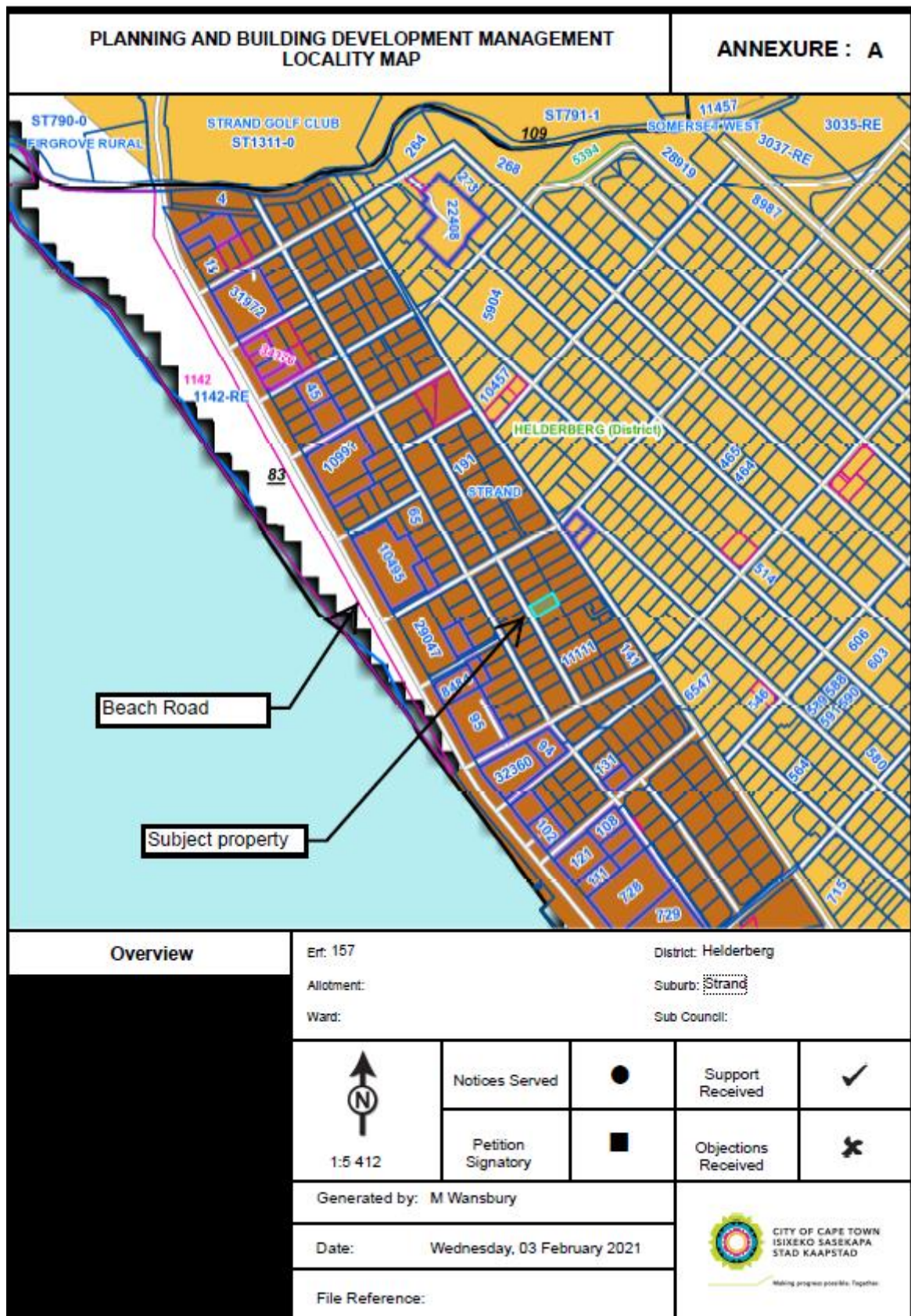
Name Daan Visser

Tel no 021 444 4618

Date 5 February 2021

Annexure

A



Annexure B





Annexure C

13 Saldanha Street

Strand

7140

The City of Cape Town

To whom it may concern


I have moved from the Northern Cape to the Strand and decided to put a roof over my open stoep adjacent to the house. I also put a lean-to in front of the garages and between the house and the adjacent flatlet. I also made alterations to the inside to the inside flatlet.

There was no instance where I had covered any storm water sewerage drains.

I was not aware of any restrictions in this regard. I learned that I have to submit a plan, I immediately contacted an architect to draw up plans for me.

I apologise for any inconvenience as result of this and I trust that you will find this in order.

Yours sincerely



Z Agenbag