



**CITY OF CAPE TOWN**  
**ISIXEKO SASEKAPA**  
**STAD KAAPSTAD**

## **REPORT TO MUNICIPAL PLANNING TRIBUNAL**

CASE ID	70507446
CASE OFFICER	KURT FISHER
CASE OFFICER PHONE NO	021 360 1233
DISTRICT	KHAYELITHSA/MITCHELLS PLAIN
REPORT DATE	FEBRUARY 2021

### **ITEM NO MPTSE150221**

**APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 27359 KHAYELITHSA, 7 NTUTYANA STREET, ILITHA PARK**

### **1 EXECUTIVE SUMMARY**

Property description	Erf 27359 Khayelithsa
Property address	7 Ntutyana Street, Ilitha Park
Site extent	±251m <sup>2</sup>
Current zoning	Single Residential Zone 2 (SR 2)
Current land use	Dwelling house
Overlay zone applicable	None
Submission date	03-11-2020
Subject to PHRA / SAHRA	No
Any unauthorized land use / building work?	Yes, unauthorized building work
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.	N/A
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.

## 3 BACKGROUND / SITE HISTORY

- 3.1 Erf 27359 Khayelithsa, (hereafter known as the subject property) measures 251m<sup>2</sup> in extent (**see Annexure A**). The unauthorized building work measures ±13m<sup>2</sup> in extent (**see Annexure B**). The subject property is zoned Single Residential Zone 2, as are most of the surrounding properties. Erf 27360, east of the subject property, is zoned Utility Zone.
- 3.2 In order to regularize the unauthorized building work, an application for a permanent departure in terms of section 42(b) of the City of Cape Town Municipal Planning By-law is required. No such application has been submitted yet.
- 3.3 An administrative penalty is required because item 27 of the Development Management Scheme (DMS) is contravened. Item 27 of the DMS is contravened because there is unauthorized building work on a portion of the property, relating to the second dwelling and domestic quarters. The aforementioned encroaches the following building lines: 0m in lieu of 1m for more than 60% of the total linear distance, along the southern common boundary line.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is attached as **Annexure C** and can be summarized as follows:

- The alterations were constructed during 2017.
- The owner was unaware that they needed a building plan and was not advised by the builder that they need an approved building plan prior to building.
- The unlawful conduct was not stopped by authorities while it was being constructed.
- The person involved did not infringe any by-laws before.

## 5 ASSESSMENT OF APPLICATION

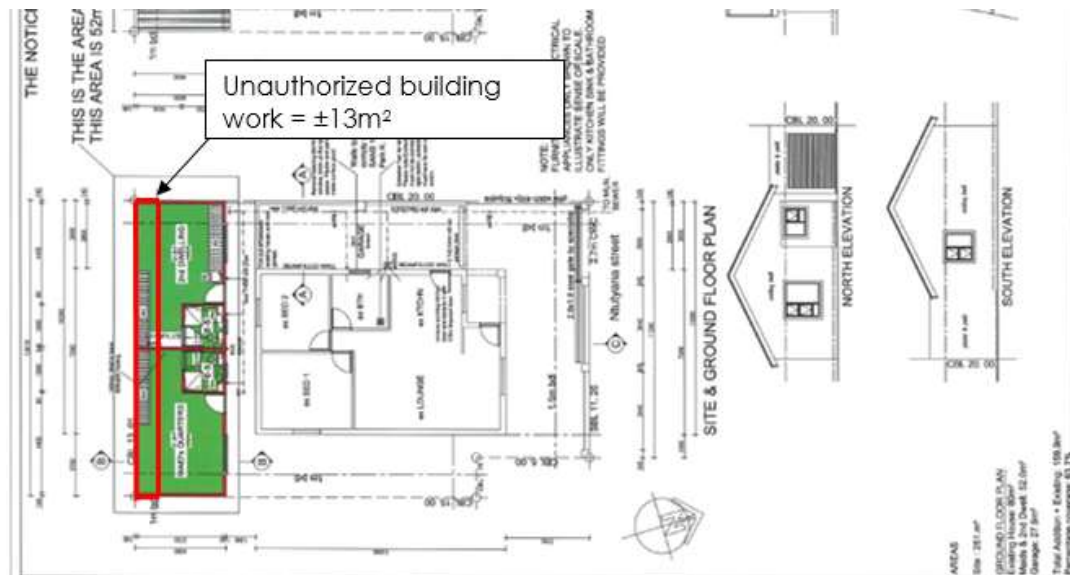
- 5.1 In terms of section 129(7)(a) of the By-law, an administrative penalty for building work may not be more than 100% of value of the building work carried out.
- 5.2 As indicated above, the building work is in contravention of item 27 of the Development Management Scheme.

### **Administrative Penalty: Calculation**

- 5.2.1 Unauthorized building work is calculated as follows:

**Value per m<sup>2</sup> (R7060) x Total unlawful area (13m<sup>2</sup>) = R 91 780.00**

an amount not exceeding a 100% of **R 91 780.00** for the unauthorized building works may be imposed as an 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** – The nature of the contravention relates to unauthorized building work at a portion of the subject property. This type of building work is not out of character in the area.

**Duration** – It has been constructed ±3 years ago, without the required land use approval being obtained. Thus, the duration of the contravention is fairly long.

**Gravity** – Although the unauthorized structures are considered to be compatible with the existing dwelling, there are no approved building plans.

**Extent** – The extent of the contravention is fairly small and amounts to a total of ±13m<sup>2</sup> (unauthorized building work that contravenes the DMS), which is approximately 5.17% of the property.

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

The occupier claims that they were unaware that a land use application was required for the unauthorised building work. As soon as they became aware of the requirement to do so, they submitted an administrative penalty application to regularise the building work. No permanent departure

application has yet been applied for. The conduct is motivated with a lack of knowledge of the planning laws.

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

The unlawful conduct has not stopped, hence the reason for the proposed application for determination of an administrative penalty in terms of section 129 of the By-Law.

**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 owner of the subject property has not previously contravened this By-Law or any other planning law.

- 5.4 In view of the aforementioned consideration in terms of section 129(8) this department recommends that a **R500.00** administrative penalty for the unauthorized building work be determined.

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarized as follows:

- 6.1 The extent of the contravention is relatively small ( $\pm 13\text{m}^2$ , 5%).
- 6.2 The duration of the contravention is fairly long (3 years).
- 6.3 As far as can be determined, the owner has not previously contravened the Municipal Planning By-Law, 2015 or any other planning law.
- 6.4 The operator submitted an application for the determination of an administrative penalty once he became aware of the contravention.

## **7 RECOMMENDATION**

In view of the above, it is recommended that:

An administrative penalty in the amount of **R500.00** be approved in terms of section 98(b) of the City of Cape Town Municipal Planning By-Law, 2015, in respect of the unauthorised building work at Erf 27359 Khayelithsa.

**ANNEXURES**

Annexure A	Locality Plan
Annexure B	Drawing of contravention
Annexure C	Applicant's motivation
Annexure D	Municipal valuation




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**Section Head : Land Use Management**
Name Danette de KlerkTel no 079 286 9219Date 5 February 2021Comment  

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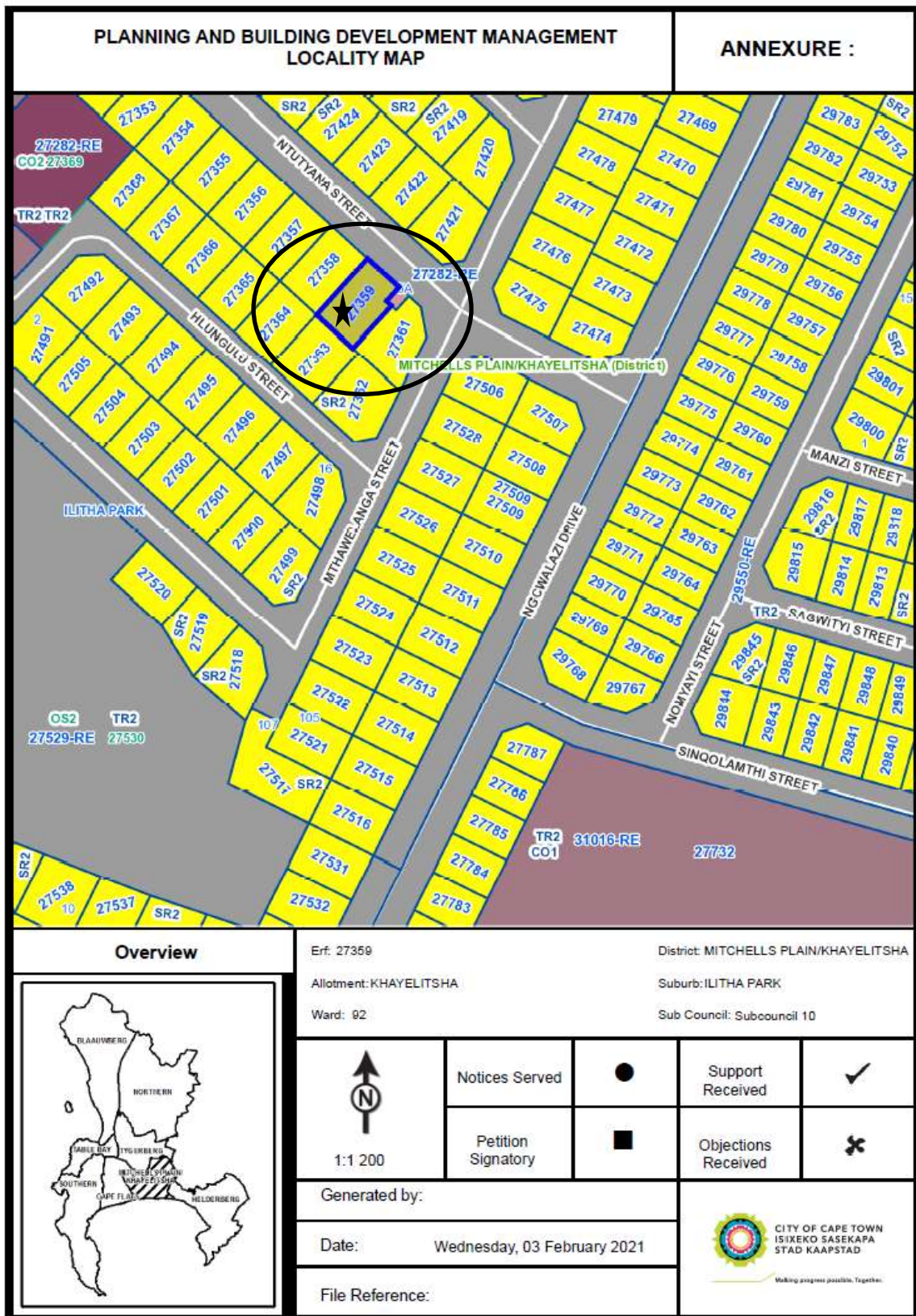
**District Manager**
Name Margot MullerTel no 021 360 1132Date 8 February 2021

Comment

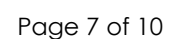
None  

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## ANNEXURE A: LOCALITY MAP











**ANNEXURE C: APPLICANT'S MOTIVATION**

PAMELA MDYESHA  
7 NTUTYANA STREET  
KHAYELITSHA

25 OCTOBER 2020

Dear Sir/Madam

**Motivation in Terms of Section 129 (8) for ERF 27359**

Application for the City to decide on an administrative penalty

**The nature, duration, gravity and extent of the contravention;**

The second dwelling was completed in December 2017 (3 years)

**The conduct of the person involved in the contravention;**

The owner was aware that they needed a building plan and was not advised by the builder that they need an approved building plan before they started build.

**Whether the unlawful conduct was stopped;**

The unlawful conduct was not stopped by authorities while it was being constructed

**Whether a person involved in the contravention has previously contravened this By-Law**

The person involved did not infringe any by-laws before

Kind regards

Ms Pamela Mdyesha

## ANNEXURE D: MUNICIPAL VALUATION

<b>Usage Code</b>	A01
<b>Usage</b>	One dwelling residential
<b>Area (Calculated)</b>	251.44 m2
<b>Total Value</b>	557000
<b>Valuation Year</b>	20190701
<b>Approval Date</b>	0000-00-00
<b>Registered Date</b>	2003-11-21
<b>Purchase Date</b>	2003-07-17
<b>Purchase Price</b>	60000,0
<b>Title Deed Number</b>	T108515/2003
<b>Business Partner Nr</b>	1001362298
<b>Owner Title</b>	Mrs.
<b>Owner Name</b>	PAMELA PHUMEZA MDYESHA
<b>Owner First Name</b>	PAMELA PHUMEZA
<b>Language</b>	EN
<b>Owner Postal Address</b>	7 NTUTYANA STREET KHAYELITSHA 7784
<b>ID Number</b>	7802200531087(SA Identity Doc, expired)
<b>Rate payer Name</b>	PAMELA PHUMEZA MDYESHA
<b>Rate payer Street Address</b>	NTUTYANA STREET 7 KHAYELITSHA ZA
<b>Rate payer Postal Address</b>	7 NTUTYANA STREET KHAYELITSHA 7784
<b>key</b>	584355
<b>Physical Address</b>	7 NTUTYANA STREET, ILITHA PARK
<b>Erf No</b>	27359