

MINUTES OF THE DECISION OF THE EXECUTIVE MAYOR TAKEN ON:

DATE: 21 APRIL 2016 **TIME:** 12h03

Resolution M/6/318/04/16

**OBJECTION TO COMPLIANCE NOTICE SERVED ON THE OWNER: ERF
177, PLETTENBERG BAY**

Department: Strategic Services

Demarcation: Ward 2

File Ref: 18/177/PB

Resolution by the Executive Mayor

1. That the content of the letter dated 12 April 2016 received from Mr K Lurie be noted.
2. That in terms of Section 89(2) (a) of the Bitou Municipality: Land Use Planning By-Law the 'Compliance Notice' dated 23 March 2016 that was served on the owner of Erf 177, Plettenberg Bay be confirmed, provided that for the purposes of Section 89(2)(b) the period within which that owner has to comply with the instruction be extended from 22 April 2016 to 31 May 2016.

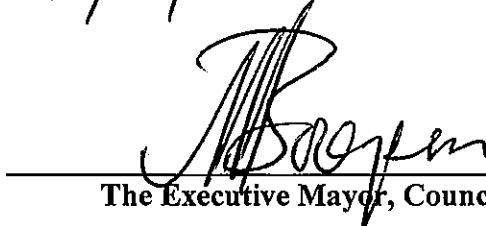
To be Actioned by: Manager: Town Planning

CONFIRMED AND SIGNED

DATE

21/4/2016

SIGNATURE


The Executive Mayor, Councillor M Booyen

Section 6: Strategic Planning

ITEM M/6/318/04/16

Decision of the Executive Mayor

OBJECTION TO COMPLIANCE NOTICE SERVED ON THE OWNER: ERF 177, PLETTENBERG BAY

Department: Strategic Services

Demarcation: Ward 2

File Ref: 18/177/PB

Attachments:

1. Annexure "A" – Locality Plan
2. Annexure "B" – Notice - Unauthorized Occupation
3. Annexure "C" – Notice - Unauthorized Building Work
4. Annexure "D" – Notice - Unauthorized Building Work
5. Annexure "E" – Notice - Planning Compliance
6. Annexure "F" – Objection to Compliance Notice

Report from: Manager: Town Planning

Date: 19 April 2016

Purpose of the report

To, in terms of the Land Use Planning By-Law, consider an objection received against a 'Compliance Notice' that was served on the owner of Erf 177, Plettenberg Bay, when building without town planning approval.

Background /Discussion

Erf 177, Plettenberg Bay is situated in Hopwood Street, as indicated on the Locality Plan attached as Annexure "A". Building plans for substantial additions and alterations to the dwelling house were approved on 31 July 2014. These additions were completed by May 2015.

During early 2016 it came to the attention of the officials that the house on the property is being occupied without the required occupation certificate, while it has also been converted into what is effectively two separate dwelling units without prior approval.

Section 6: Strategic Planning

On 1 March 2016 the Building Control Officer served a Notice (attached as Annexure "B") to the effect that the unlawful occupation of the house without an occupation certificate should be terminated. This instruction was ignored by the land owner, and the house is still being occupied by both the owner (in the upper levels of the house) and two tenants (in the lower section of the house).

During a site inspection by the Building Control Officer conducted on the same day (i.e. 1 March 2016) to deliver the Notice referred to above, the Building Control Officer noticed that substantial alterations were being undertaken to the garage on the property. As these alterations occurred without prior building plan approval (they did not form part of the building plan that was approved on 31 July 2014) he issued a verbal instruction that the unauthorized work should be stopped. This instruction was ignored, and the building work continued.

This action prompted the Building Control Officer to on 2 March 2016 prepare a written "stop order" (attached as Annexure "C"). This Notice was served by the Assistant Building Control Officer (Khanyisa Mapitiza) on 3 March 2016. On that same day she also gave a further verbal instruction that the unauthorized work should be stopped.

On 10 March 2016 the Area Building Control Officer (Irvin Varnicker) conducted a further site inspection, during which it was noted that further building work had taken place, notwithstanding the Notice served and instruction given on 3 March 2016.

On 16 March 2016 the Area Building Control Officer conducted another site inspection, and it was noted that yet further building work had taken place since 10 March 2016. As a result of the conduct of the owner/builder the Building Control Officer on that same day (i.e. 16 March 2016) prepared a Notice for the purposes of the 'Building Act 103/1977' that the unauthorized work should be stopped and 'rectified' (i.e. removed/demolished). This Notice (attached as Annexure "D") was served on the owner on 17 March 2016.

A nearby property owner who brought the unauthorized occupation and building work to the attention of the Municipality, understandably was not satisfied with the situation and conduct of the owner of Erf 177, instituted legal proceedings against the owner of erf 177. At that time there was a real risk that the proceedings would have been brought against the Municipality for allowing the situation to develop in the first instance. However, as a result of discussions between the Manager: Legal Services, the Building Control Officer and the representatives of the owner who launched the proceedings, the Municipality was only cited as Third Respondent, and without any cost implications.

It is only on 16 March 2016, after the legal action had been initiated (and probably as a result thereof), that the owner of Erf 177 stopped the unauthorized construction.

One further aspect is relevant. As the original garage encroached over the street building line, any extension to that garage (horizontally or vertically) required a further building line relaxation. No application for such relaxation had been submitted or approved before the owner proceeded with the unauthorized building work.

Section 6: Strategic Planning

The Land Use Planning By-Law requires the Municipality to serve a 'Compliance Notice' on an owner who had proceeded with building work in conflict with the Zoning Scheme Regulations (as has happened in this instance). In that 'Compliance Notice' there is an option to either instruct the owner to make application for a departure, or alternatively to instruct the owner to demolish the affected portions of the building.

In this particular instance the 'Compliance Notice' dated 23 March 2016 (attached as Annexure "E") required that the owner should "*restore the outbuilding (garage) on erf 177, Plettenberg Bay to its original form as indicated on the building plans that were approved on 31 July 2014 by no later than 22 April 2016*". The instruction to "restore" was given as, firstly, the Building Control Officer had already issued a similar order in terms of the 'Building Act' on 16 March 2016, secondly due to the conduct of the owner of Erf 177 whereby three different 'instructions to stop' were ignored and the owner wilfully continued with building operations, and lastly as the building works comprise of the building exceeding the normal 'single storey' height of outbuildings (i.e. a complete waiver of a street building line would not readily be granted/supported if the outbuilding in question exceeds a 'single storey height').

The Land Use Planning By-Law makes provision that a person on whom a 'Compliance Notice' has been served may object to that Notice. The consideration of that objection has not been delegated to an official, and consequently it has to be considered by the Executive Mayor.

In a letter dated 12 April 2016 (attached as Annexure "F") the architect, Mr K Lurie, lodged an objection to the 'Compliance Notice'. The first important point is that he confirms that the unlawful work was only stopped on 16 March 2016. The following comment can be offered on his specific reasons for objection:

- (a) If only the roof was replaced it would have qualified as a 'minor building work'. It was the "*last minute decision*" to increase the height of the garage that caused the problem, as that did not and does not qualify as 'minor building work' in terms of the 'Building Act'. This is not a valid objection to the 'Compliance Notice'.
- (b) The departure application could and should have been submitted and the approval thereof should have been obtained before the construction commenced and proceeded. The architect does not explain nor give any reason why the owner acted the way in which he did. This is not a valid objection to the 'Compliance Notice'.
- (c) The same comment in paragraph (b) equally applies here.
- (d) It is not normal for a complete waiver of a street building line in the case of an outbuilding that exceeds the normal height of 'single storey' only. In addition, the work undertaken does not qualify as 'minor building work'. This is not a valid objection to the 'Compliance Notice'.

Section 6: Strategic Planning

Financial Implication

No financial implication for Council.

Executive Summary

A compliance notice was served on the owner of erf 177, Plettenberg Bay when the owner built an addition to a garage without first having obtained the necessary planning approval. In spite of numerous notices, both written and verbal, the building work continued, so the owner must have been aware that the work was in contravention of bylaws and or legislation. The notice was served in terms of the stipulations of Section 87 of the Bitou: Land Use Planning By-law. The By-law also provides for a landowner to object to the compliance notice which has now been submitted by Keith Lurie Architecture on behalf of the owner. The objection must be considered and decision taken to confirm the notice or uphold the objection.

Relevant Legislation

Bitou Municipality: Land Use Planning By-law

Recommended by the Municipal Manager

1. That the content of the letter dated 12 April 2016 received from Mr K Lurie be noted.
2. That in terms of Section 89(2) (a) of the Bitou Municipality: Land Use Planning By-Law the 'Compliance Notice' dated 23 March 2016 that was served on the owner of Erf 177 Plettenberg Bay be confirmed, provided that for the purposes of Section 89(2)(b) the period within which that owner has to comply with the instruction be extended from 22 April 2016 to 31 May 2016.





to be the best together

Private Bag X1002 Plettenberg Bay 6600
Tel +27 (0)44 501 3000 Fax +27(0)44 533 3485

Enquiries	Contact details	Fax number	Email
Creswell Basson	044 501 3300	044 533 6885	cbasson@plett.gov.za

Our Ref: 18/177/PB

01 March 2016

Kim Crosby Trust
509 Bantry Place
Bantry Bay
Cape Town
8000

Att: K. Crosby
REGISTERED LETTER

Dear Sir / Madam

RE: UNAUTHORIZED OCCUPATION: ERF 177, HOPWOOD STREET; PLETTENBERG BAY.

It was found that you or a person acting on your behalf has completed the building depicted as per plan no: 273/ 2014 . It was also found that the building is now being occupied without the formal written approval of this Local Authority in direct contravention of Section 14 (4) (a) of the National Building Regulations and Building Standards Act (Act 103 of 1977). In fact, according to my records no application for a Certificate of Occupancy has to date even been received by this office.

In view of the above you are hereby instructed to:

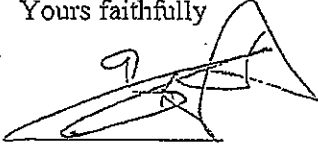
- (i) Without undue delay (and in any event within 14 days) submit a request in the prescribed manner for the issuing of a Certificate of Occupancy in accordance with Section 14 (1) of Act 103 of 1977;
- (ii) With immediate effect refrain from occupying the building in question until such time that the required Certificate of Occupancy has been issued by the Municipality.

Should you fail to comply with this instruction, legal proceedings may be instituted against you without further notice.

I trust that it will not be necessary for such action to be taken.

You are invited to clear any uncertainties you may have in respect of this letter timeously with Mr. Creswell Basson (044) 501 3300.

Yours faithfully



David Friedman
Head: Strategic Services



Copy hand delivered to Erf 177, Plettenberg Bay

Received by:

Name

Company / on behalf of

Date

Signature

"C"



to be the best together

Private Bag X1002 Plettenberg Bay 6600
Tel+27 (0)44 501 3000 Fax +27(0)44 533 3485

Enquiries	Contact details	Fax number	Email
Creswell Basson	044 501 3310	044 533 6885	cbasson@plett.gov.za

Our Ref: 18/177/PB

02 March 2016

Kim Crosby Trust
509 Bantry Place
Bantry Bay
CAPE TOWN
8000

REGISTERED LETTER

Dear Sir / Madam

RE: UNAUTHORIZED BUILDING WORK: ERF 177 PLETTENBERG BAY.

Following a complaint, it was found that you or a person acting on your behalf erected a structure on the said premises, without the formal approval of this Local Authority. You are therefore in contravention of Section 4 (1) of the National Building Regulations and Building Standards Act (Act 103 of 1977), which reads as follows:

"No person shall, without prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act".

In view of the above Notice is hereby served in terms of Regulation A25 (9) of the Regulations promulgated under Act 103 of 1977 to, with immediate effect, rectify the illegal building work from the property concerned that was placed in conflict with the provisions of Section 4 (1) of Act 103 of 1977.

You are invited to clear any uncertainties you may have in respect of this letter timeously with Mr. C. Basson (044) 501 3310.

Yours faithfully

David Friedman
Head: Strategic Services

Copy hand delivered to Erf 177 No. 11 Hopwood Street, Plettenberg Bay

Received by:

MR. FREDERICK
Name

SCARAB BUILDER
Company / on behalf of

3.03.2014
Date

F.K. Coetzee
Signature

"D"

Bitou

to be the best together

Private Bag X1002 Plettenberg Bay 6600
Tel+27 (0)44 501 3000 Fax +27(0)44 533 3485

Enquiries	Contact details	Fax number	Email
Creswell Basson	044 501 3310	044 533 6885	cbasson@plett.gov.za

Our Ref: 18/177/PB

16 March 2016

Kim Crosby Trust
509 Bantry Place
Bantry Bay
CAPE TOWN
8000

REGISTERED LETTER

Dear Sir / Madam

RE: UNAUTHORIZED BUILDING WORK: ERF 177 PLETTENBERG BAY.

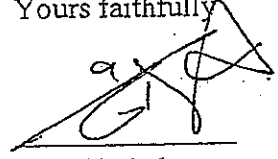
I refer to my previous letter dated 02 March 2016, it was found that you or a person acting on your behalf erected a structure on the said premises and proceed with construction, without the formal approval of this Local Authority. You are therefore in contravention of Section 4 (1) of the National Building Regulations and Building Standards Act (Act 103 of 1977), which reads as follows:

"No person shall, without prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act"

In view of the above Notice is hereby served in terms of Regulation A25 (9) of the Regulations promulgated under Act 103 of 1977 to, with immediate effect stop new building work and rectify the illegal building work from the property concerned that was placed in conflict with the provisions of Section 4 (1) of Act 103 of 1977, to be in compliance with the original approved building for the garages.

You are invited to clear any uncertainties you may have in respect of this letter timeously with Mr. C. Basson (044) 501 3310.

Yours faithfully



David Friedman
Head: Strategic Services

PP

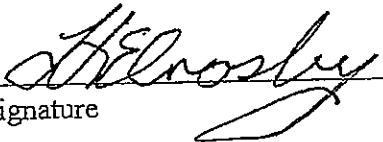
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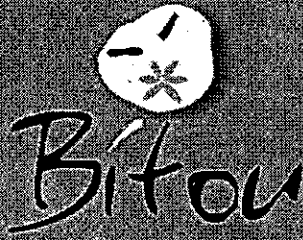
Received by:

Kim Crosby
Name

Kim Crosby Trust
Company / on behalf of

17/03/2016
Date


Signature



munisipaliteit umasipala municipality

to be the best together

Private Bag X1002 Plettenberg Bay 6600
Tel +27 (0)44 501 3000 Fax +27(0)44 533 3485

Enquiries Chris Schliemann	Contact details 044 501 3324	Fax Number 086 659 7954	E-mail cschliemann@plett.gov.za
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Our ref: 18/177/PB

23 MARCH 2016

The Kim Crosby Trust
c/o Ms K E Crosby
11 Hopwood Street
PLETTENBERG BAY
6600

By Hand
By Registered mail
By e-mail: kecrosby@gmail.co.za
dalei@sentineltrust.co.za

Madam

ERF 177, PLETTENBERG BAY: UNAUTHORIZED BUILDING WORK IN CONFLICT WITH THE PLETTENBERG BAY ZONING SCHEME

It has come to the attention of this office that you or a person acting on your behalf or on your instructions have undertaken building work in the form of alterations of and additions to an existing outbuilding (garage) on Erf 177, Plettenberg Bay without prior building plan approval.

This building work, which (inter alia) exceeds the street building line prescribed in terms of the Plettenberg Bay Zoning Scheme, was also undertaken without the required authorization under Section 15(2)(b) of the Bitou Municipality: Land Use Planning By-Law ('the By-Law'), which came into operation on 1 December 2015, and was therefore done in conflict with Section 15(1) of the 'By-Law'.

Section 86(1)(a) of the 'By-Law' stipulates that any person who contravenes or fails to comply with Section 15(1) is guilty of an offence.

Notice is hereby served in terms of Section 87(1), read with Section 87(2)(a), of the 'By-Law', to:

- (i) with immediate effect cease any unlawful construction activity on Erf 177, Plettenberg Bay; and to
- (ii) restore the outbuilding (garage) on Erf 177, Plettenberg Bay to its original form as indicated on the building plans that were approved on 31 July 2014 by not later than 22 April 2016.

Kindly note that should you fail to comply with this Compliance Notice the Municipality may institute legal proceedings as provided for in Section 90 of the 'By-Law'.

Should you wish to object to this Compliance Notice written representations in this regard must be submitted to the undersigned within 30 days of date of receipt hereof.

Yours faithfully



.....
C. Schliemann
MANAGER: TOWN PLANNING

Copy hand delivered to Erf 177, Plettenberg Bay

Received by:

Name

The Kim Crosby Trust

Company / on behalf of

Date

Signature

12 April 2016

Your Ref : 18/177/PB

C. Schliemann

Manager, Town Planning

Bitou Municipality

ERF 177, PLETTENBERG BAY: UNAUTHORIZED BUILDING WORK IN CONFLICT WITH THE
PLETTENBERG BAY ZONING SCHEME

On behalf of The Kim Crosby Trust, I hereby object to the compliance notice referred to above.

- The garage had a severe damp problem that was being repaired, and the old roof needed replacement. These are maintenance issues. A last minute decision was made to raise the roof just over 1m to allow for some overhead storage space for surf boards, canoes, etc.
- A Departure application for the relaxation of the building line is ready for submission.
- Building plans are ready for submission.
- We believe that it should be acceptable as the impact of the alteration is minor.

Please note regarding point (i) in your Compliance Notice:- All unlawful construction was ceased upon receipt of the order to stop building works, delivered on the 16 March 2016.

In light of the above, we would prefer to not restore the building to it's original form, unless after the application process, it is deemed to be not approvable or acceptable.

Regards

Keith Lurie