



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

1347

## REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70374658
CASE OFFICER	Yunus Hugo
CASE OFFICER PHONE NO	021 684 4349
DISTRICT	Cape Flats
REPORT DATE	2019-05-27

ITEM NO **MPTSW44/06/19**

**WARD 60: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 60217 CAPE TOWN, 47 WOODBURY ROAD LANSDOWNE**

### 1 EXECUTIVE SUMMARY

Property description	Erf 60217 Cape Town
Property address	47 Woodbury Road Lansdowne
Site extent	903.36m <sup>2</sup>
Current zoning	Single Residential 1
Current land use	Dwelling house and learning centre (place of instruction)
Overlay zone applicable	None
Submission date	
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Outbuilding and learning centre (place of instruction)
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?	No

If yes, an administrative penalty may not be applied for.	1348
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

The subject property is zoned Single Residential 1 in terms of the Development Management Scheme (DMS). A portion of the outbuilding on the northern common boundary building line contravenes the Development Management Scheme. A learning centre (place of instruction) is also being operated from the unauthorised outbuilding as well as from part of the existing dwelling.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The structure was first constructed for the purpose of using it for a store with no intension of using it for a domestic quarter.
- The owner was therefore under the impression that no plans were required seeing that it was only a store area.
- On enquiring about developing the structure into a habitable quarter the owner was made aware that the structure needed the approval of the municipality. He stopped the work and made application for the approval of the structure from the municipality.
- The property started being used for a learning centre 5 years ago when Mrs Kyzer started tutoring her nephew who had a muscle tone defect which impacted his mainstream schooling.
- He was the only learner for 3 years.
- In 2016, the number of learners at the learning centre grew to 8.
- Mrs Kyzer claims that she was advised by another play-school in the area that it was not necessary for rezoning as long as there were less than 15 learners.

- Between February and May 2017, the number of learners increased to 32, at which stage enquiries were made and a notice was served on the owner of the residence to apply for a departure to allow the learning centre to operate.
- The owner claims he have no connection or involvement with the centre except for being the owner of the property.
- Between June and October, the owner claims he has been to the council offices four times, getting different forms for the application to be uploaded. The people involved with the centre have been looking at alternate venues in the meantime, as per advice from the land use inspector while the application process was being done.

## 5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised use and building work is in contravention of the Development Management Scheme.
- 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.

### and

In terms of section 129(7)(b) of the By-Law, an administrative penalty for the land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.

### **Administrative Penalty: Calculation**

#### 5.2.1 Unauthorised building work

*Value per m<sup>2</sup> (as provided in the spreadsheet) × Total Unlawful area (m<sup>2</sup>) = R*

Value per m <sup>2</sup>	=	R 5 720,00
Total Unlawful area (outbuilding)	=	8.5m <sup>2</sup>
Calculated value (Value x Area)	=	R48 620

#### 5.2.2 Unauthorised land use

*$\frac{\text{Total Municipal Value of property}}{\text{Total area of property (m}^2\text{)}} \times \text{Total Unlawful Area (m}^2\text{)} = R$*

Total Municipal Value of property	=	R2 600 000
Total area of property (m <sup>2</sup> )	=	903.36m <sup>2</sup>

	1350	
Value per m <sup>2</sup>	=	R2878
Total Unlawful Area	=	117m <sup>2</sup>
Total Value of Unlawful Area	=	R336 726
Total Value of both the above	=	R48 620 + R336 726 = <b>R385 346</b>

An amount which is not more than 100% of **R385 346** may be imposed as 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 outbuilding contravenes the development rules in the Single Residential 1 zone, namely the 3m northern common boundary building line. The unauthorised learning centre (place of instruction) operates from the unauthorised outbuilding and from portions of the main dwelling.

Duration - According to the applicant the learning centre was started five years ago with enrollment reaching 32 in May 2017. According to aerial photography, it appears that the unauthorised building work exists from 2007. Both contraventions are considered to be of a long duration.

- 6.1 Gravity - The gravity of the contraventions is considered to be medium. Only 8.5m<sup>2</sup> of the unauthorised building work is in contravention of the DMS whilst the unauthorised learning centre operates mainly from the approved existing dwelling with some of the operations taking place in the 31m<sup>2</sup> outbuilding (which is unauthorised).

Extent - The portion of the building which contravenes the DMS is 8.5m<sup>2</sup>. The learning centre covers an area of approximately 117m<sup>2</sup>.

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

The current owner carried out the unauthorised building work and land use.

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

The unauthorised structure was constructed prior to the submission of a building plan and exists. The unauthorised land use activity 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 current owners of the property have not previously contravened this By-Law or any other planning law.

- 5.3 In view of the abovementioned considerations this Department recommends that an administrative penalty to the total value of **R2 000** as indicated below be imposed:

- **R250** of the value of the unauthorised building work
- **R1 750** of the value of the unauthorised land use

## 6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 A portion of the outbuilding at the rear of the property contravenes the Development Management Schemes building line provisions.
- 6.2 A learning centre is operating from the property which is in contravention of the Development Management Scheme.
- 6.3 The gravity of the contraventions is considered to be medium.
- 6.4 The duration of the unauthorised building work is considered to be long (from about 2007).
- 6.5 The duration of the learning centre is also long as it has been operating for the past 5 years.
- 6.6 As far as can be ascertained the owner of the property has not previously contravened the Municipal Planning By-Law or any other planning law.

## 7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R2 000** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 60217 Cape Town in accordance with plan no - DRAWING No. 60217/02 drawn by Daniel brown dated 11-10-2017

**ANNEXURES**

1352

Annexure A	Regional Locality Plans
Annexure A-1	Locality Plan
Annexure B	Plan of Contravention
Annexure C	Motivation



---

**Section Head : Land Use  
Management**

Comment

Name    A McCann

Tel no    021 6844341

Date    30 May 2019



---

**District Manager**

Name    Chad Newman

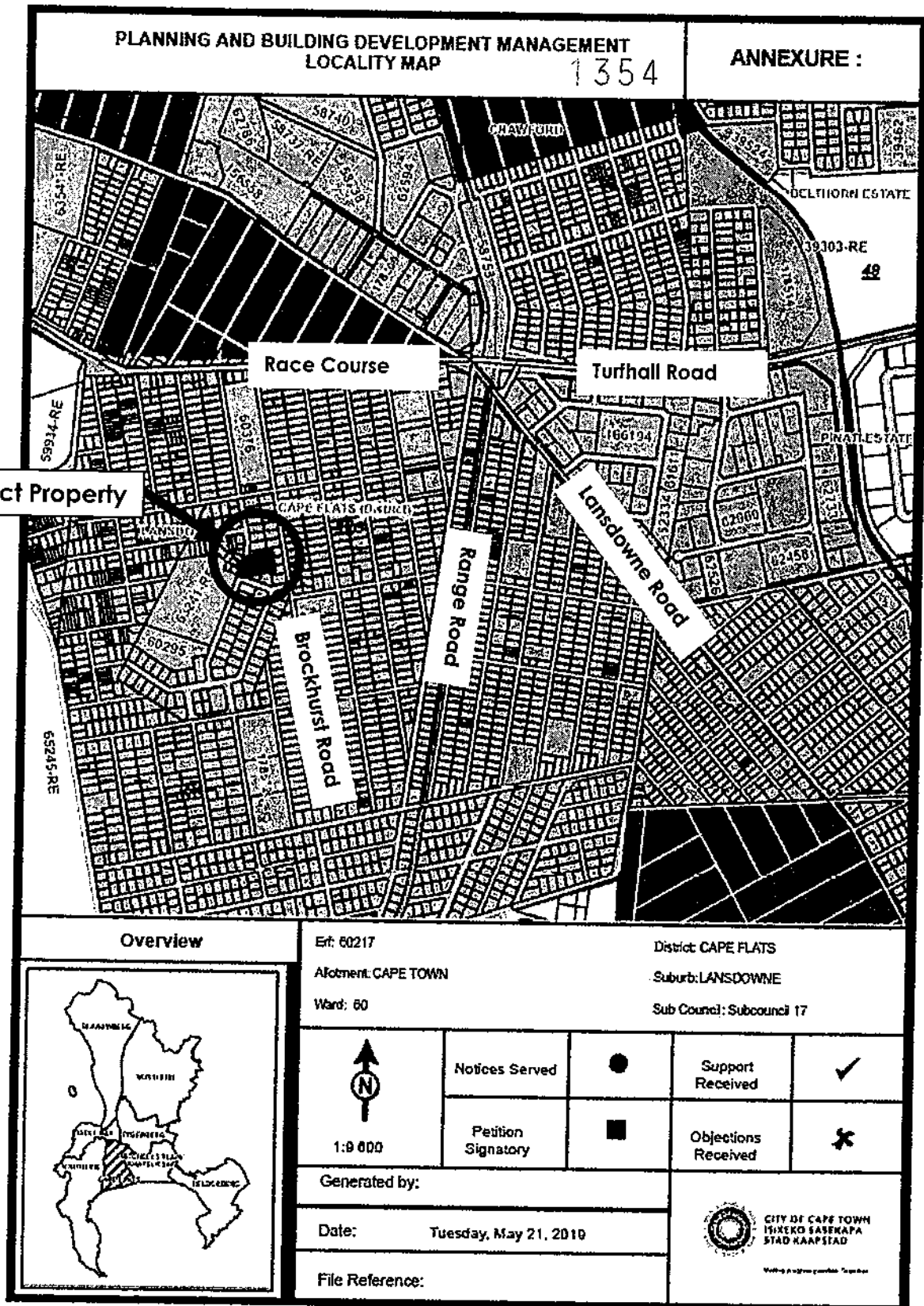
Tel no    021 684 4310

Date    31 May 2019

Comment

1353

# ANNEXURE A: REGIONAL LOCALITY PLAN



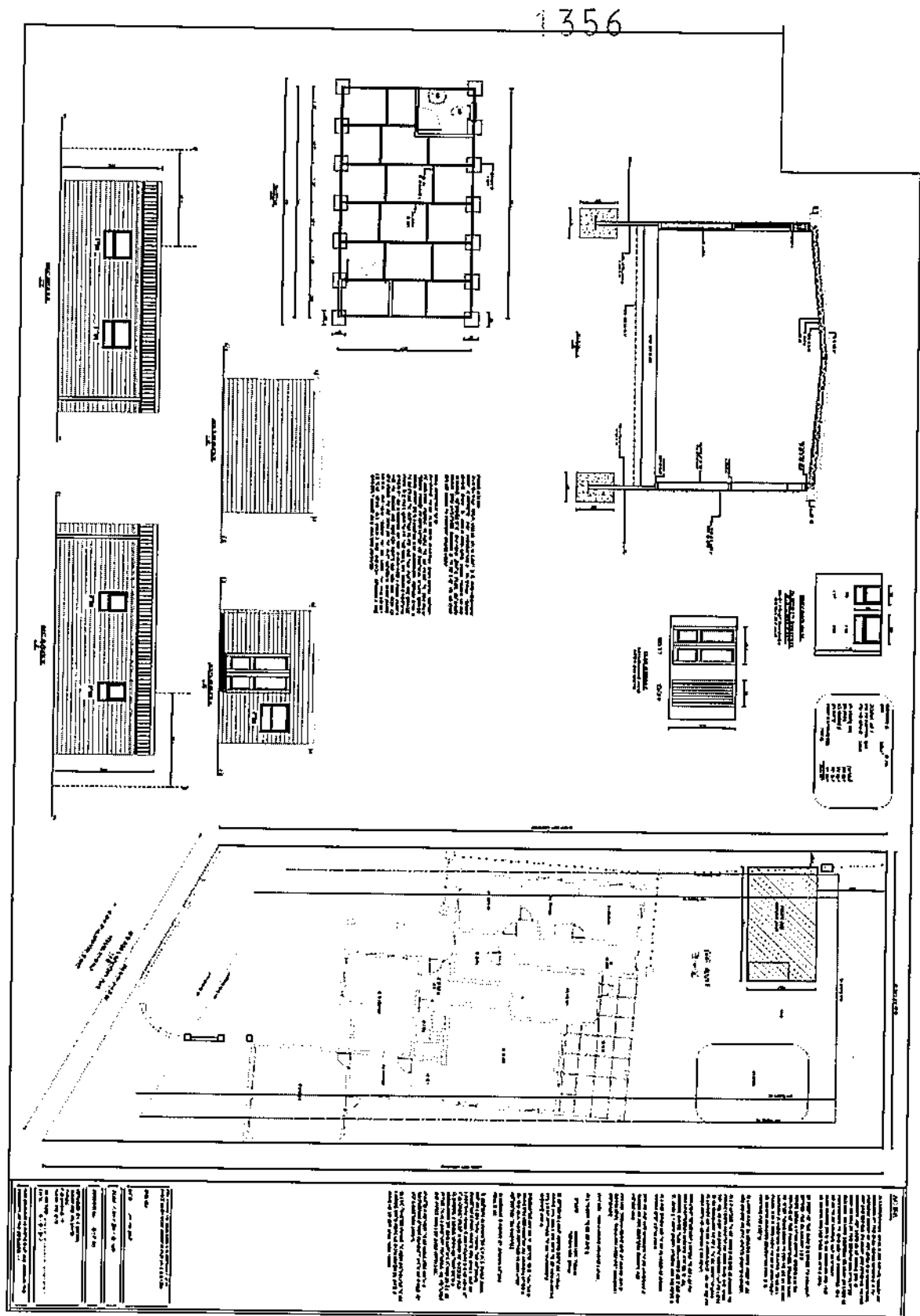


# ANNEXURE A-1: LOCALITY PLAN

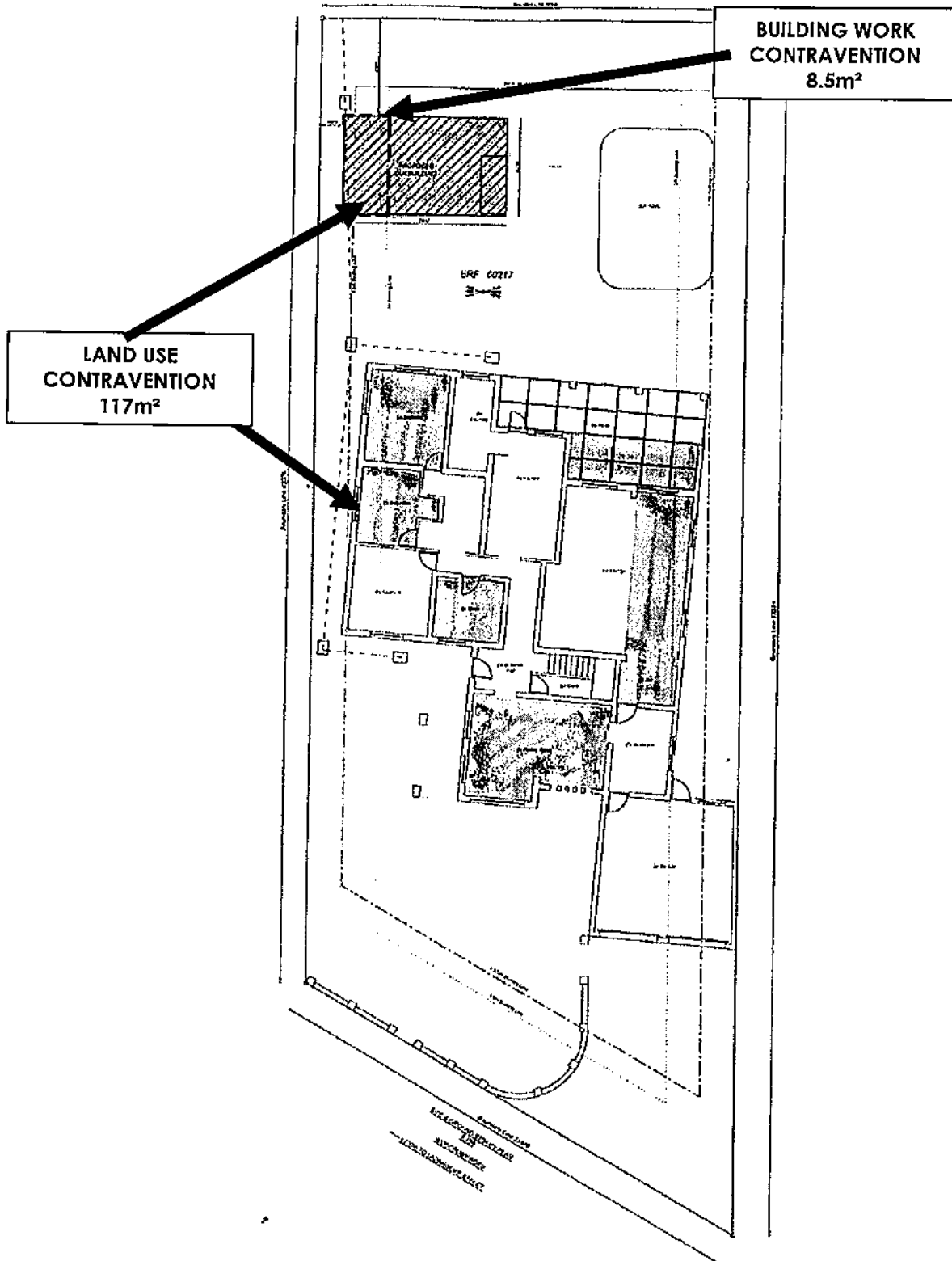
1355

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :	
<b>Subject Property</b> SR1 60217		District: CAPE FLATS Suburb: LANSDOWNNE Sub Council: Subcouncil 17	
<b>Overview</b> 		Erf: 60217 Allocation: CAPE TOWN Ward: 60	
1:1 200 		Notices Served 	Support Received 
Petition Signatory 		Objections Received 	
Generated by:			
Date: Tuesday, May 21, 2019		CITY OF CAPE TOWN ISIKHOKO SASAKHABA STAD KAAPSTAD <small>Making progress possible together</small>	
File Reference:			

# ANNEXURE B: SITE DEVELOPMENT PLAN SHOWING CONTRAVENTION



1357



## ANNEXURE C: APPLICANTS MOTIVATION

1358

Mr D R Kyzer  
47 Woodbury Road  
Kenwyn 7780  
Tuesday, 24 October 2017  
The City of Cape Town

**Motivation letter:**

I hereby wish to motivate the reason for the unauthorised domestic quarters to the property Erf no: 60217 at 47 Woodbury Road Kenwyn.

The structure was first constructed for the purpose of using it for a store with no intension of using it for a domestic quarters. I was therefore under the impression that no plans were required seen that it was only a store. On enquiring about developing the structure into a habitable quarters I was made aware that the structure needed the approval of the municipality. I stopped the work and made application for the approval of the structure from the municipality

The proposed struture does not pose a threat to the health, safety and wellbeing of the surrounding property owners, or the surrounding environment.

The proposed struncture is in keeping with the building materials and finishes of the existing dwelling, and will thus not have an adverse effect on the streetscape and general built character of the area. Concerning services, e.g. electricity, sewerage etc. the entire existing infrastructure will not be disturbed.

Hoping this application will be favourably considered.

Thank you



Mr D R Kyzer

*Reasons Why Learning Centre Was Operating Illegally And Continued To Do So*

The residential premises started being used for learning about 5 years ago when Mrs Kyzer (my wife) started tutoring her nephew who had a muscle tone defect which impacted his mainstream schooling. They wanted to hold him back for a third year in Grade 4. He was the only learner for 3 years and was reintroduced into mainstream education. A year later, a neighbor approached Mrs Kyzer and asked her to tutor her son in the afternoon while he attended Islamic school in the morning. He too was the only pupil in school for the first year. The Next year, three of his friend from Islamic school joined him for afternoon tutoring. In 2016 the number of learners grew to 8. She made enquiries from another play-school in the area who advised her that it was not necessary for rezoning as long as there were less than 15 learners.

Between February and May 2017, the number of learners increased to 32, at which stage enquiries were made and a notice was served to me as the owner of the residence to apply for a departure to allow the learning centre to operate.†

I have no connection or involvement with the centre except as the owner of the residence. Between June and October I have been to the C.C. office four times, getting different forms for the applications to be uploaded. The people involved with the centre have been looking at alternate venues in the meantime, as per advice from the inspector (Mr Carr) while the application process was being done. The motivation letter in the application for use departure explains the mitigating factors for the continued illegal running of the learning centre.