



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

## **REPORT TO MUNICIPAL PLANNING TRIBUNAL**

CASE ID		70478492			
CASE OFFICER		KEATON JACOBIE			
CASE OFFICER PHONE NO		021 444 0568			
DISTRICT		BLAAUWBERG			
REPORT DATE		04 March 2020			
INTERVIEW REQUESTED	APPLICANT	YES		NO	✓
	OBJECTOR(S)				✓

**ITEM NO: MPT60/06/20**

**APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 28199, 1D PILOT CLOSE, BLOUBERG SANDS, MILNERTON.**

### **1 EXECUTIVE SUMMARY**

Property description	Erf 28199, Blouberg Sands, Milnerton
Property address	1D Pilot Close, Blouberg Sands, Milnerton
Site extent	321.56 m <sup>2</sup>
Current zoning	General Residential Zoning 1: Group Housing (GR1)
Current land use	Dwelling house
Overlay zone applicable	16km Koeberg Overlay Zone

Submission date	25 February 2020
Subject to PHRA / SAHRA	N/A
Any unauthorised land use / building work?	Yes, unauthorised building work; <ul style="list-style-type: none"> <li>Enclosed patio within 5m street building line;</li> </ul>
Has owner applied for the determination of an administrative penalty	Yes, the administrative penalty is the subject of this report
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

## 3 BACKGROUND / SITE HISTORY

- The property is zoned GR1 in terms of the City of Cape Town Development Management Scheme (DMS) and forms part of a group housing scheme.
- The unlawful building work is for an enclosed patio to the front of the property which are in contravention of the DMS's development parameters.
- The owner is applying for a determination of an administrative penalty as contemplated in section 129(1) of the By-Law.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

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

- Owner started the process of having plans drawn up to submit and be approved by the City, however the process was not completed by the previous architect, who passed away.
- The owner was under the impression plans were indeed approved and started construction.
- The structure is compatible with surrounding residential fabric.

## 5 ASSESSMENT OF APPLICATION

5.1 As indicated above, the unauthorized building work is in contravention of the DMS.

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.

### **Administrative Penalty: Calculation**

5.2.1 Unauthorized Enclosed Patio

**Value per m<sup>2</sup> (R2 640.00) × Total Unlawful area (3.16m<sup>2</sup>) = R8 342.40**

An amount which is not more than 100% of R 8 342 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 DMS states for land units forming part of a group housing site development, a 5m building line applies where the group housing site abuts an external public street. The unauthorized enclosed patio is in contravention of the 5m street building line. The structure is however still considered compatible with the GR1 zoned property and no complaints from neighbours were received, nor was a notice served.

**Duration** – The applicant indicated 4 years, since approximately 2016.

**Gravity** – The structure is not viewed as having an adverse impact on the health and wellbeing of the surrounding area. Due to the nature of the structure, its compatibility with surrounding land uses and its minor extent of 3.16m<sup>2</sup>, the gravity is considered to be low.

**Extent** – 3.16m<sup>2</sup> (exceeding the permitted 5m street building line).

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

The owner started the process of submitting plans to the City and states to have been under the impression that building plans was indeed approved. However, whether the unauthorized structure was completed willfully or not, unlawful building work without prior land use and building plan approval still took place. It is to be noted that the owner applied for a determination of administrative penalty without being served a notice.

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

Unlawful building work remains.

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

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

- 5.4 Given the minor extent and nature of the contravention and conduct of the owner, this office recommends that an administration penalty of **R 500** be imposed.

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarized as follows:

- 6.1 The contravention is of a relatively long duration i.e. four years.
- 6.2 The unauthorized structures are considered to not adversely impact on health, safety and wellbeing of the immediate surroundings.
- 6.3 The structure is not out of character with surrounding properties and impact of the structure on surrounding built form is thus considered minimal.
- 6.4 The owner requested a determination of a penalty without receiving a notice which shows good faith.

## **7 RECOMMENDATION**

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of **R 500** be determined for the unauthorised building work in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of erf 28199, Blouberg Sands, Milnerton in accordance with drawing no: PLA HB824, dated 26 August 2019, drawn by: Hayley Bird and such penalty be approved in terms of section 98(b) of the Municipal Planning By-Law.

**ANNEXURES**

Annexure A	Locality Plan
Annexure B	Building plan / Site plan
Annexure C	Applicant's motivation
Annexure D	Title Deed
Annexure E	Previous Approved Plan

*Emari*

<b>Section Head : Land Use Management</b>		Comment
Name	Elmari Marais	
Tel no	021 444 0562	
Date	12.03.2020	

*Dube*

<b>District Manager</b>		Comment
Name	Linah Dube	
Tel no	021 444 0561	
Date	12.03.2020	

# **ANNEXURE A**

## **LOCALITY PLAN**

# PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

ANNEXURE : A1

## Subject Property

MELKBOSCH STRAND

**23**CAPE FARMS - DISTRICT B  
Subcouncil 1

Subcouncil 7

**105**

BLAUBERGSTRAND

BIG BAY

BLAAUWBERGSTRAND

BLOUBERG SANDS

WEST BEACH

BLOUBERGRISE

BLOUBERGGRANT

SUNNINGDALE

BLAAUWBERG (District)  
SANDOWN**107**

PARKLANDS

**104**

RIVERGATE

NORTHERN (District)

THE STABLES

RACING PARK

DUNOON

ANNANDALE FARM

KILLARNEY GARDENS

RICHWOOD

Subcouncil 3

RICHMOND PARK

DE GRENDAL FARM

MILNERTON

BURGUNDY ESTATE

TYGERBERG (District)

PETROSA TANK FARM

SUNSET BEACH

MILNERTON RIDGE

ROYAL ASCOT

MONTAGUE GARDENS

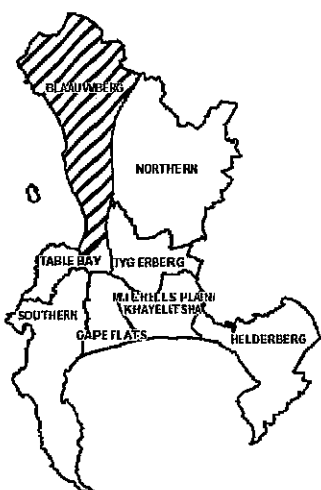
MARCONI BEAM

BOTHASIG

KLEINBOSCH

EDGEMOOR

## Overview



Erf: 28199

Allotment: MILNERTON

Ward: 23

District: BLAAUWBERG

Suburb: BLOUBERG SANDS

Sub Council: Subcouncil 1



1:76 800

Notices Served

Support  
ReceivedPetition  
SignatoryObjections  
Received

Generated by:

Date: Wednesday, 04 March 2020

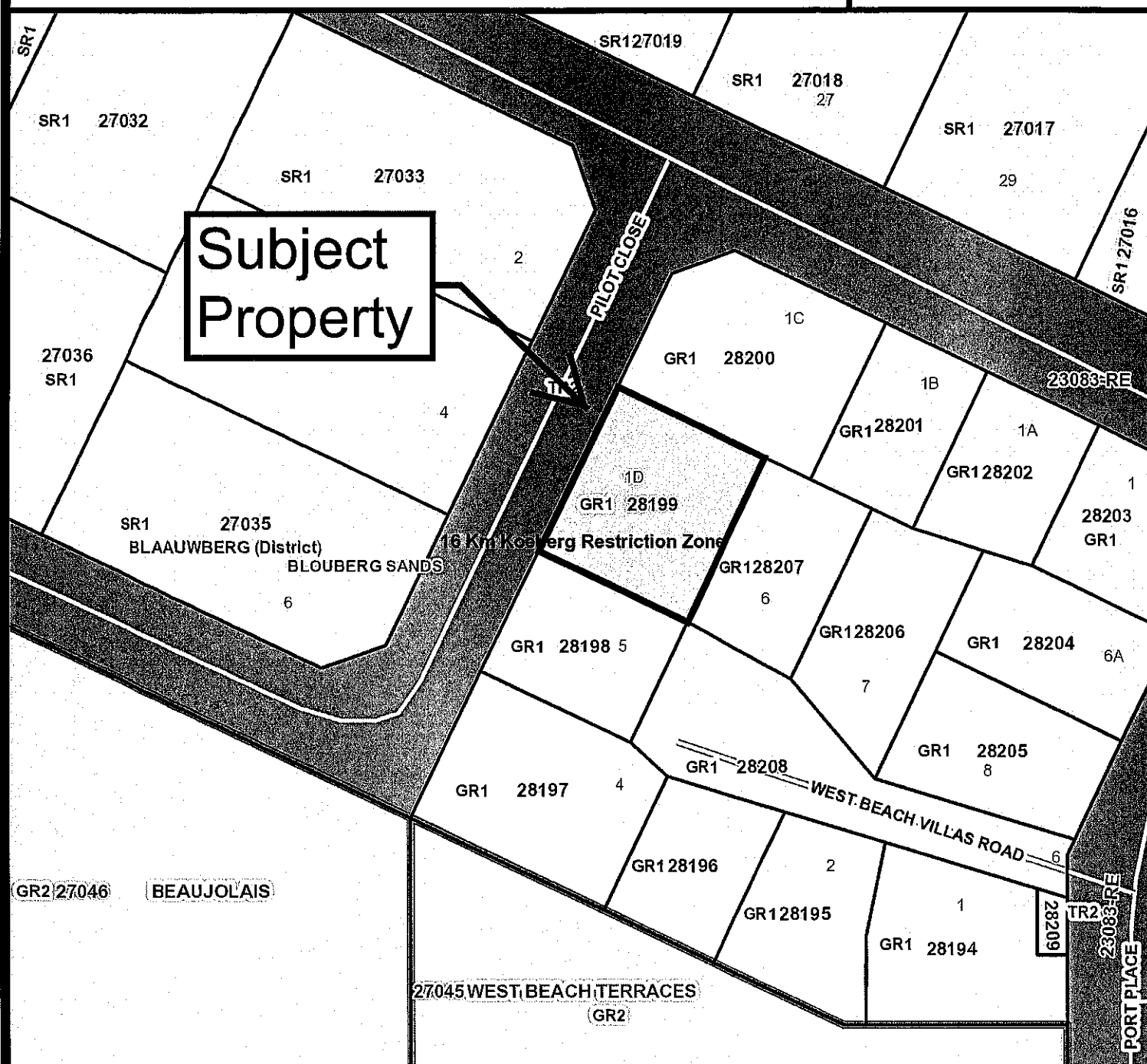
File Reference:

CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

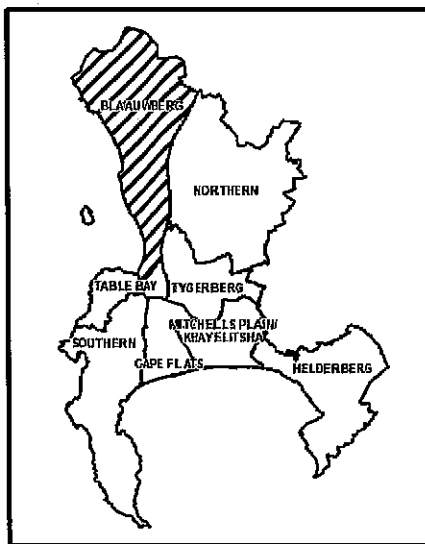
Making progress possible. Together.

## 896

**ANNEXURE : A2**



## Overview



Erf: 28199

Allotment: MILNERTON

Ward: 23

District: BLAAUWBERG

Suburb: BLOUBERG SANDS

**Sub Council: Subcouncil 1**



1:600

## Notices Served

Support  
Received

### Petition Signatory



## Objections Received



Generated by:

Date: Wednesday, 04 March 2020

File Reference:

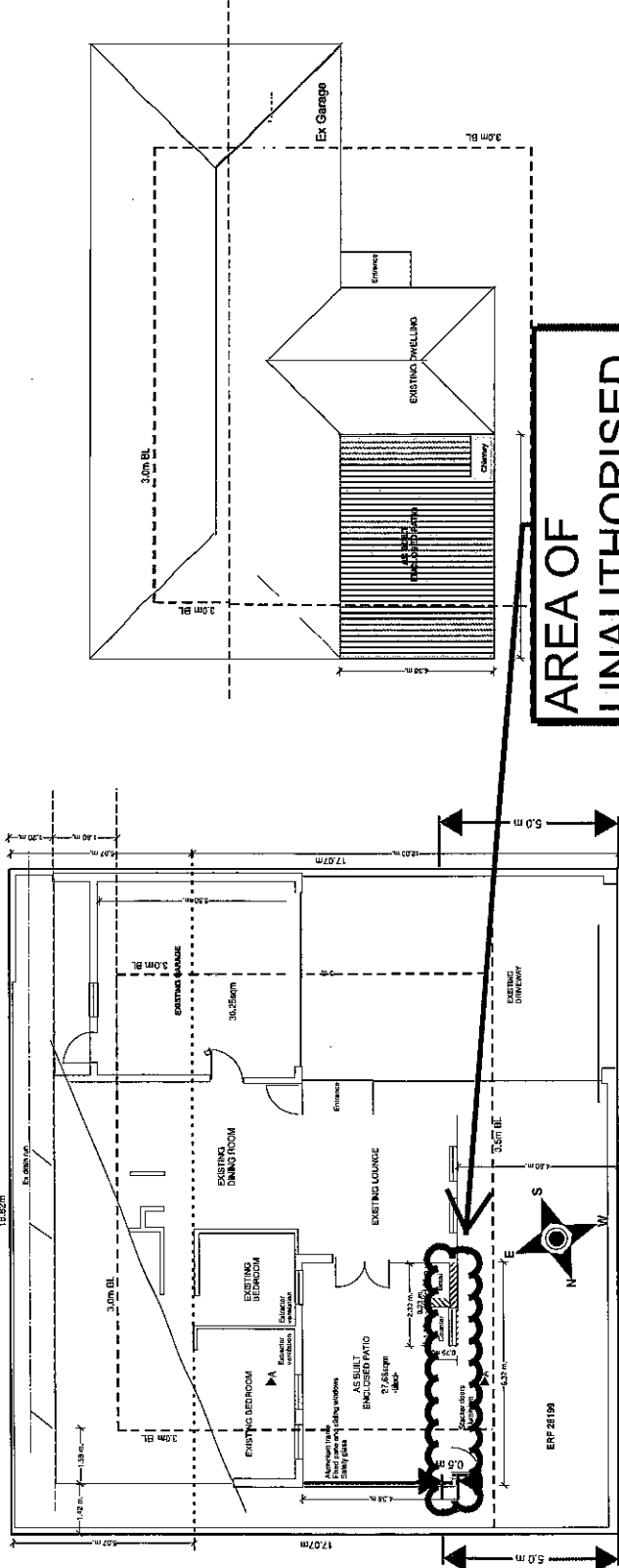


CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

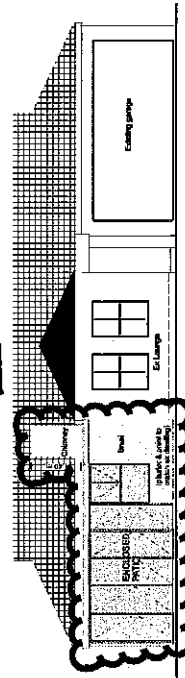
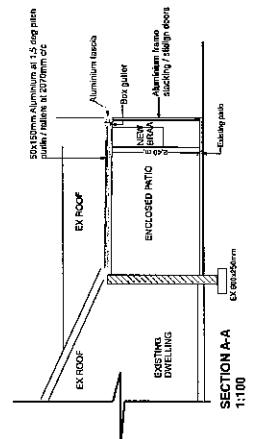
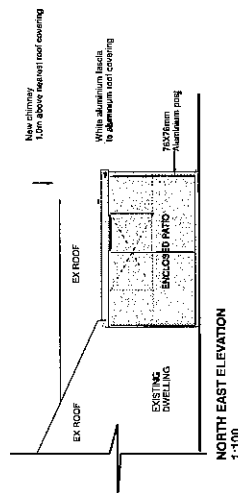
**Making progress possible. Together.**

**ANNEXURE B**

**PLAN INDICATING UNAUTHORISED  
BUILDING WORK**



SITE AND FLOOR PLAN  
1:100



**AREA OF  
UNAUTHORISED  
BUILDING WORK  
3.16m²**

<p><b>AS BUILT CONDITIONS</b></p> <p><b>ADDITIONS</b></p>	<p><b>Architect:</b></p> <p><b>HAYLEY BIRD</b>  <b>COMPLETE COAST PROPERTIES CC</b>          SACAP: D0454          P.O. BOX 379 MELBOURNE STRAND 7441          TEL: 021 553 2235 / 082 561 7116          HAYLEY@COMPLETECOAST.COM          WWW.COMPLETECOAST.COM</p> <p>DRAWING NO: RA H8824 DATE: 26/06/2019</p>	<p><b>ERF 28199</b>  <b>No 1D PILOT CLOSE</b>  <b>West Beach Villas</b>  <b>Blouberg Sands</b></p> <p><b>OWNER: Mrs N. Stemmet Nee Britz</b></p>
---	---	--

**AREAS**

ERP 28199  
 Ex House: 133.55sqm  
 Enclosed Patio: 27.68sqm  
 NEW HOUSE SIZE: 161.18sqm  
 NEW COVERAGE: 594sqm

**NOTES**

All glazing to be safety glazing  
 Aluminium Frame / Awning for manufacturing spans  
 New DP to connect to ex SWR

# **ANNEXURE C**

## **APPLICANT'S MOTIVATION**

**MOTIVATION – ERF 28199, Blouberg Sands.****BACKGROUND:**

This property was constructed in 1999, the original house plan approved by council is dated 11/08/1998, at that time, as the plan shows, the Building Line to the street was 4.5meters and 0/zero common building line was shown (the dwelling is built to the edges of the ERF common boundary)

Around 2015, the Patio was enclosed with glass side panels and a louvered aluminium style awning.

The Owner of the property appointed Neville De Kock to draft the plan for the enclosed patio.

Neville passed away at some stage through this process, we presume whilst obtaining neighbour consent for the 3.0m Common Building Line encroachment, he had obtained 3 of the 6 neighbour consent No Objection Letters. Town Planning had issued the Locality Map and the No Objection Forms which means that the plans were in process of scrutiny. The owner, without knowing that the plans had not been officially stamped for approval went ahead to have the patio enclosure constructed according to these plans.

The Owner approached us to assist in getting the As Built plans approved when we listed the property for sale and found that the enclosed patio was not stamped off.

- Original house plan attached
- Neville de Kock plan attached, showing 3.5meter street building line and the 12m setback for common lines
- No objection letters (Neville de Kock plan) attached
- Locality Map issued by town planning for the 3m common building line encroachment attached

**CONTRAVENTION****Nature of contravention**

A patio enclosed with glass panes and sliding door plus aluminium louvred awning cover

**Duration of contravention**

2015/ 2016

**Gravity of contravention**

The surrounding properties are all established according to the less restrictive building lines and therefore the patio enclosure is not blatantly obvious as a contravention.

**Extent of contravention**

The area of the patio currently projecting over the 5m street building line is 3.16sqm  
And the projection over the 3m common boundary line is 20.76sqm  
Total extent of contravention is 23.92sqm

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

As per 'background', the Owner believed the plan to have been approved at the time of the Architect's passing, however, they only found out years later that the plans were not submitted for final approval.

**Whether a person involved in the contravention has previously contravened this By-Law or a previous planning law**

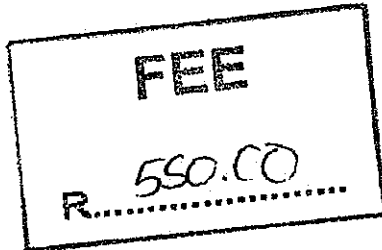
There are no previous contraventions by this person

# **ANNEXURE D**

## **TITLE DEED**

10

10 BILL TOLKEN HENDRIKSE INC.



Prepared by me

*[Signature]*  
CONVEYANCER  
TOLKEN WJ

VERBIND		MORTGAGED	
VIR FOR R. 664 000,00			
B	007285/11	<i>[Signature]</i>	
2011-03-14			
		REGISTRATEUR/REGISTRAR	

T 013043/11

## DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

LIEZL JEANINE KRITZINGER

TA / CA.

31 MAR 2011

~~WILLIAM J. HERRA~~

appeared before me, REGISTRAR OF DEEDS at Cape Town, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed at BELLVILLE on 14 DECEMBER 2010 granted to him by

HEINRICH EBEN MEYER  
Identity Number 710915 5001 08 6  
Unmarried

DATA / VERIFY  
13 APR 2011  
MINE LOORRAINE

And the appearer declared that his said principal had, on 20 October 2010, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

**NATASJA BRITZ**  
**Identity Number 700923 0138 08 7**  
**Unmarried**

her Heirs, Executors, Administrators or Assigns, in full and free property

A 1/2 (ONE HALF) SHARE IN ERF 28199 MILNERTON  
 IN THE CITY OF CAPE TOWN  
 DIVISION CAPE  
 PROVINCE OF THE WESTERN CAPE

IN EXTENT 321 (THREE HUNDRED AND TWENTY ONE) SQUARE  
 METRES

FIRST TRANSFERRED by Deed of Transfer Number T86159/1998 with  
 General Plan Number 3482/1998 relating thereto and held by Deed of  
 Transfer Number T25233/2001.

- A. SUBJECT to such conditions as are referred to in Deed of Transfer Number T372 dated 24<sup>th</sup> April 1890.
- B. SUBJECT FURTHER to the terms of the endorsement dated 27<sup>th</sup> June 1986 on Deed of Transfer Number T11380/1960, reading as follows:

"Remainder

By Certificate of Registered Title Number T24715/86, the Remainder of the within property is SUBJECT to the following special conditions contained in Deed of Transfer Number T25233/2001 imposed by the Administrator of the Province of the Cape of Good Hope in terms of Section 9 of Ordinance Number 33 of 1934:

- (a) The owner of this erf shall without compensation, be obliged to allow gas mains, electricity, telephone and television cables and/or wires and main and/or other waterpipes and the sewage and drainage including stormwater of any other erf or erven to be conveyed across this erf, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon if deemed necessary by the Local Authority in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above.

- (b) The owner of this erf shall be obliged, without compensation, to receive such material or permit such excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the Local Authority

As will more fully appear from the said Certificate of Registered Title."

- C. SUBJECT FURTHER to the terms of an endorsement on Deed of Transfer Number 11380/1960 dated 2 February 1994, which endorsement reads as follows:

"The withinmentioned property is subject to a Powerline Servitude in favour of Eskom with Ancillary Rights. K 96/94."



WHEREFORE the said Appearer, renouncing all right and title which the said


**HEINRICH EBEN MEYER, Unmarried**

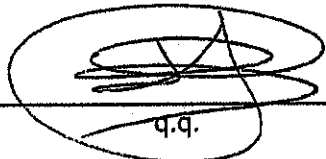
heretofore had to the premises, did in consequence also acknowledge him to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

**NATASJA BRITZ, Unmarried**


her Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R526 000,00 (FIVE HUNDRED AND TWENTY SIX THOUSAND RAND).

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at Cape Town on 2011-03-14 2010-

  
q.q.

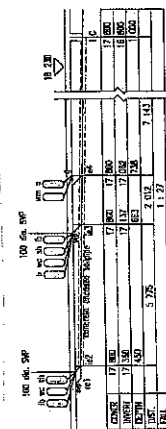
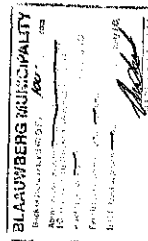
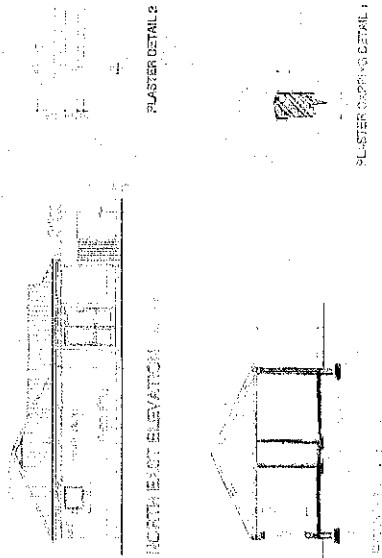
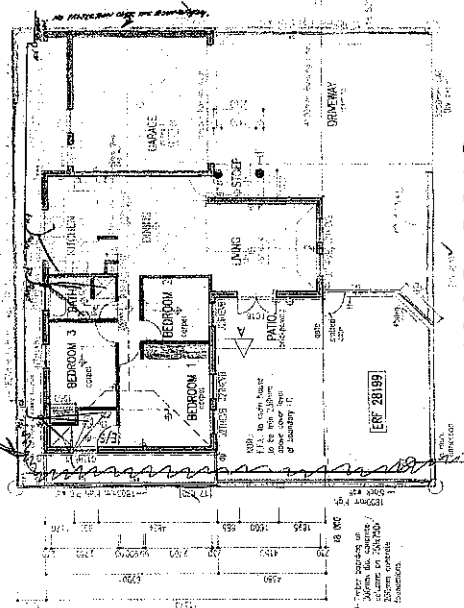
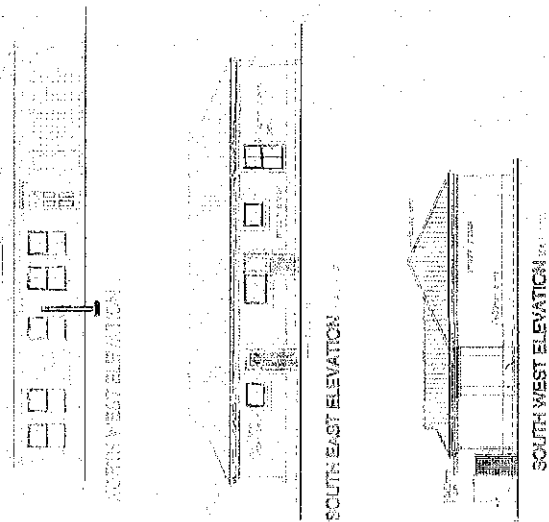
In my presence



\_\_\_\_\_  
REGISTRAR OF DEEDS

# **ANNEXURE E**

## **PREVIOUS APPROVED PLAN**



## NOTES

SECTION THRU BRICK VEHICLE WALL (drone)  
OFFICIAL

SECTION THRU BRICKBLOK WALL (BY DWG/