



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70437353
CASE OFFICER	F Abrahams
CASE OFFICER PHONE NO	021 684 4344
DISTRICT	Cape Flats
REPORT DATE	2019-05-24

ITEM NO **MPTSW47/06/19**

WARD 66: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 32 GRASSY PARK, 9 PERTH ROAD

1 EXECUTIVE SUMMARY

Property description	Erf 32 Grassy Park
Property address	9 Perth Road, Grassy Park
Site extent	496m ²
Current zoning	Single Residential SR1
Current land use	Dwelling house
Overlay zone applicable	None
Submission date	2019-03-22
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	There is unauthorised building work in the form of extensions to the first-storey on the southern common boundary line.
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	No

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?	1383
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2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

- 3.1 The site is zoned Single Residential Zone 1 (SR1).
- 3.2 Extensions to the existing dwelling house were built without an approved building plan.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The owners commenced with the work ± July 2018.
- The works are completed.
- No notice was issued and the owner was instructed by the applicant to submit building plans.
- The unauthorised works was over a period of 2 months.
- All of the unauthorised work is on the first-storey.
- The owners never previously contravened the MPBL or any previous planning law.

5 ASSESSMENT OF APPLICATION

- 5.1 The administrative penalty is required for unauthorized building work on the subject property in the form of an extension to the first-storey, which contravenes Item 22(d) of the Development Management Scheme (DMS) in terms of setbacks due to the height.
- 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.

5.3 Unauthorised building work calculation: ^{1 3 8 4}

Value per m² (as provided in the spreadsheet) × Total Unlawful area (m²) = R

$$R5\ 720.00 \times 4,56m^2 = R26\ 083$$

An amount which is not more than 100% of **R26 083** may be imposed as an 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 nature of the contravention relates to the unauthorized building work in the form of an extension to the first-storey that contravenes the setback due to height.

Duration – According to the applicant, the unauthorized building work was constructed ± 10 months ago. However, Council's aerial photography shows the extension there in January 2017 already.

Gravity - The gravity of the contravention is not serious.

Extent - The extent of the contravention is small, 4,56m².

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

The owner appears to want to rectify the situation by applying for the administrative penalty application, even though they were not served with a notice.

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

The unlawful conduct has not been stopped.

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

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

5.5 In view of the abovementioned considerations, a R300-00 administrative penalty for the building contraventions is recommended.

6. REASONS FOR DECISION

Reasons for the recommended decision may be summarized as follows:

- 6.1 The unauthorised first floor building work contravenes Item 22(d) of the Development Management Scheme (DMS).
- 6.2 The contravention is of a medium term duration.
- 6.3 The gravity of the contravention is not serious.
- 6.4 The extent of the contravention is small.
- 6.5 As far as can be ascertained, the owner of the property has not previously contravened this 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 **R300.00** be approved in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 32 Grassy Park for a portion of the extension to the dwelling house in accordance with the plan with Drawing Number Isaacs 01/2018, dated 25th Nov 2018 and drawn by M Greeff.

ANNEXURES

Annexure A	Locality plan
Annexure B	Site Development Plan
Annexure C	Applicant's motivation



Section Head : Land Use Management

		Comment
Name	A McCann	
Tel no	021 6844341	
Date	30 May 2019	

1386



District Manager

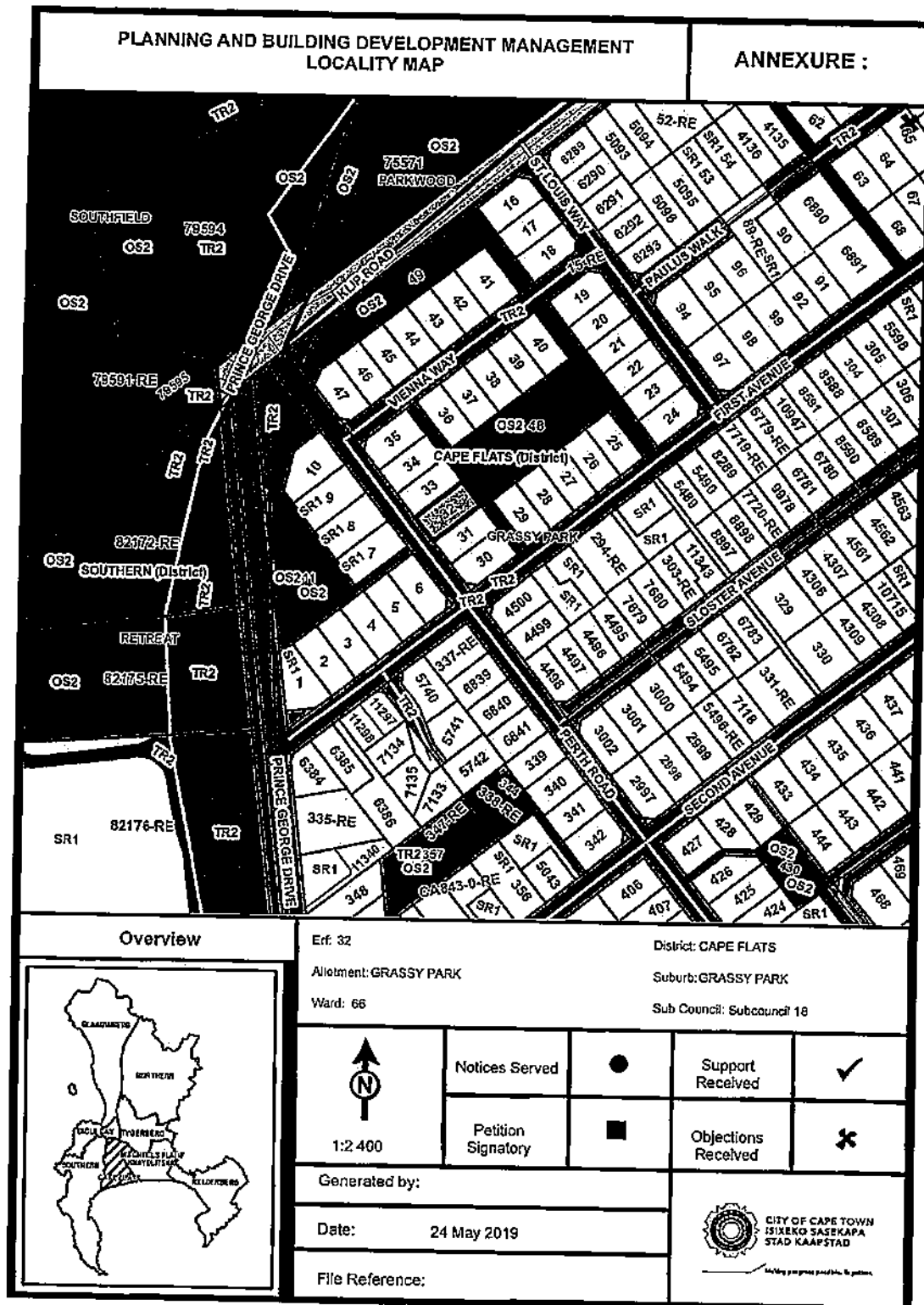
Name Chad Newman


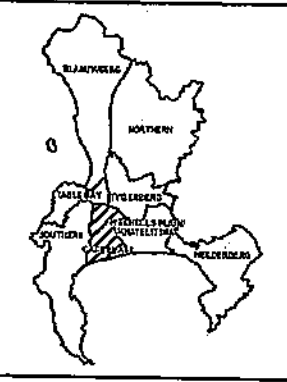






Tel no 021 684 4310

Date 30 May 2019

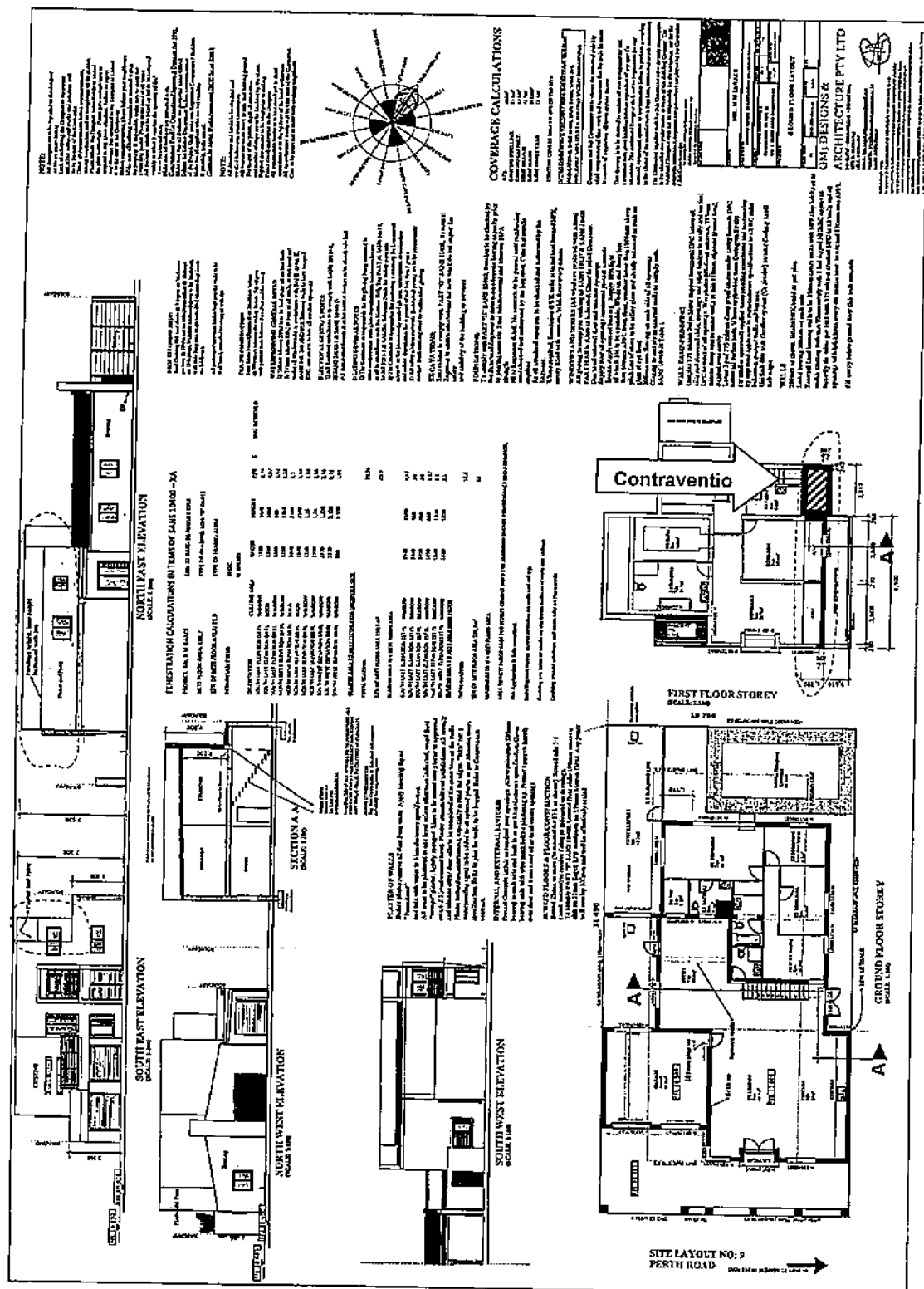
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ANNEXURE A – LOCALITY PLANS

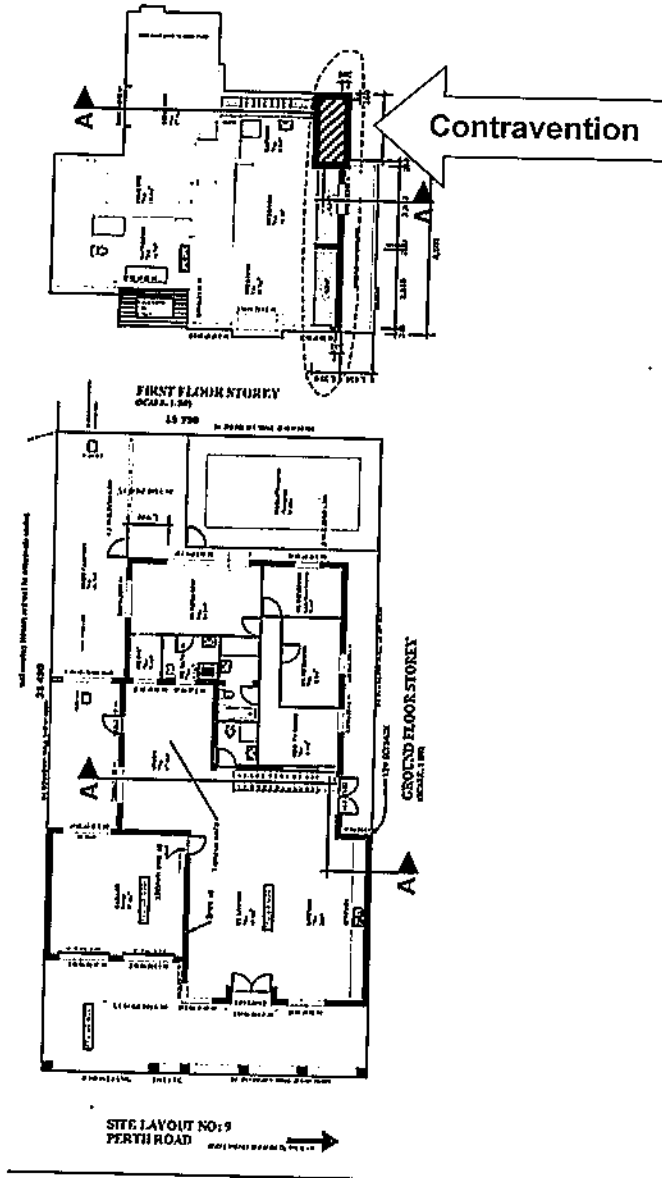
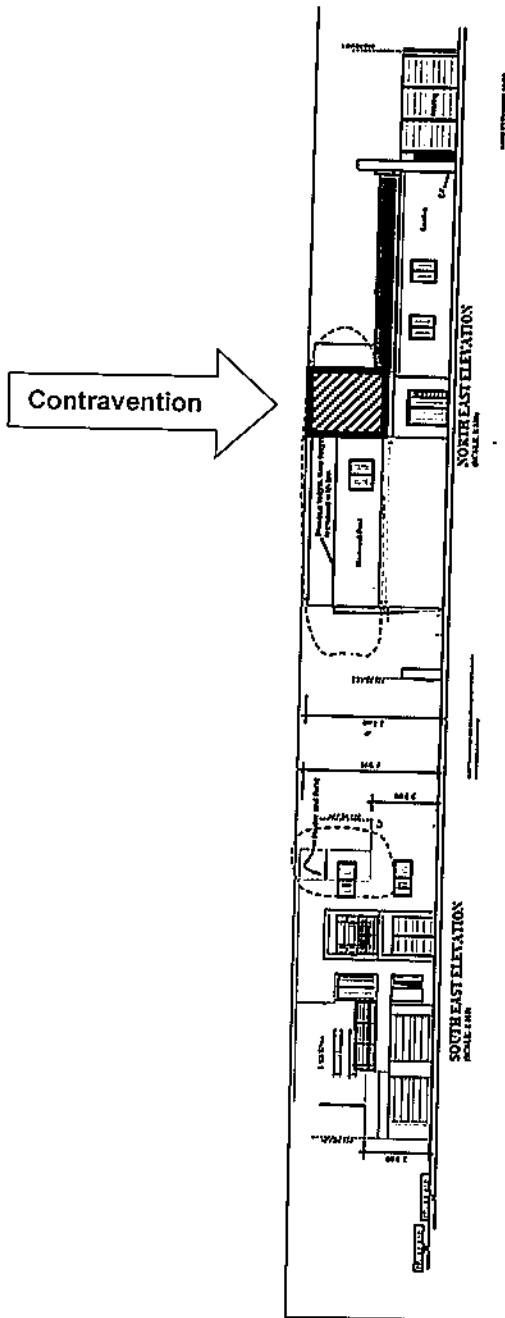


PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :																													
																															
Overview 		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">Erf: 32</td> <td colspan="2">District: CAPE FLATS</td> </tr> <tr> <td colspan="2">Allotment: GRASSY PARK</td> <td colspan="2">Suburb: GRASSY PARK</td> </tr> <tr> <td colspan="2">Ward: 66</td> <td colspan="2">Sub Council: Subcouncil 18</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td rowspan="2" style="text-align: center; vertical-align: middle;">  1:15 000 </td> <td style="text-align: center;">Notices Served</td> <td style="text-align: center;">●</td> <td style="text-align: center;">Support Received</td> <td style="text-align: center;">✓</td> </tr> <tr> <td style="text-align: center;">Petition Signatory</td> <td style="text-align: center;">■</td> <td style="text-align: center;">Objections Received</td> <td style="text-align: center;">✗</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td colspan="2">Generated by:</td> <td rowspan="3" style="text-align: center; vertical-align: middle;">  CITY OF CAPE TOWN ISIXEKO SASEKAPA STAD KAAPSTAD <small>Making progress possible. Together.</small> </td> </tr> <tr> <td colspan="2">Date: 24 May 2019</td> </tr> <tr> <td colspan="2">File Reference:</td> </tr> </table>		Erf: 32		District: CAPE FLATS		Allotment: GRASSY PARK		Suburb: GRASSY PARK		Ward: 66		Sub Council: Subcouncil 18		 1:15 000	Notices Served	●	Support Received	✓	Petition Signatory	■	Objections Received	✗	Generated by:		 CITY OF CAPE TOWN ISIXEKO SASEKAPA STAD KAAPSTAD <small>Making progress possible. Together.</small>	Date: 24 May 2019		File Reference:	
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ANNEXURE B – SITE DEVELOPMENT PLAN



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ANNEXURE C – MOTIVATION

Property description:	Erf: 32 No: 9 Perth road Grassypark
Registered owner:	Mr. Nadeem Mogamad Isaacs
Agent:	GM3 Designs / Gamiem Moses
Site extend:	495m²
Any unauthorised land use: Yes	

Date: 4th December 2018

PURPOSE OF APPLICATION:

1) AP APPLICATION

Dear All

The client commenced with the works in and around 1st July 2018. The works are completed.

No notice was issued and the Client was instructed by me Gamiem Moses to submit building plans. As the Designer I was not aware of the unauthorised works.

The unauthorised works was over a period of 2 months.

All of the unauthorised works are on the first-floor storey.

The client never previously contravened the MPBL or any previous Planning Law.

In view of the above it is recommended that the application will receive the Municipalities favourable decision.



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