



## REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID		70438176			
CASE OFFICER		Foren Benting			
CASE OFFICER PHONE NO		021 444 1043			
DISTRICT		Northern			
REPORT DATE		June 2019			
INTERVIEW REQUESTED	APPLICANT	YES		NO	√
	OBJECTOR(S)				√

**MPTNE26/07/19**

### ITEM NO

**WARD 105: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 51 DARWIN ROAD, WINDSOR ESTATE, KRAAIFONTEIN**

### 1 EXECUTIVE SUMMARY

Property description	Erf 314, Kraaifontein
Property address	51 Darwin Road, Windsor Estate, Kraaifontein
Site extent	782 m <sup>2</sup>
Current zoning	Single Residential Zone 1 (SR1)
Current land use	Dwelling house
Overlay zone applicable	None
Subject to PHRA / SAHRA	N/A
Any unauthorised land use / building work?	Yes. Unauthorised building work (carport)
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 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 969
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## 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

## 3 BACKGROUND / SITE HISTORY

- The applicant initially applied for permanent building line departure (case ref 70430847).
- The case officer noted that the proposed structures i.e. carport and lean-to were unauthorised.
- An application for administrative penalty was therefore requested.
- The authorised lean-to over the 3m common building line complies with the criteria for an outbuilding - refer to item 22(f)(i) of the Development Management Scheme Regulations (DMS).
- The unauthorised carport is in deviation of item 22(f)(i) & (iii) of the DMS.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

The property owner's motivation for the proposed is attached as **Annexure C** and may be summarised as follows:

- The owner was misled by the contractor who advised that no building plans were required for the unauthorised carport.
- The unauthorised structure was built approximately 1 year ago.
- The owner has not contravened the By-Law before.

## 5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised 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.

### Administrative Penalty: Calculation

#### 5.2.1 Unauthorised building work

$$\text{Value per m}^2 \text{ (as provided in the spreadsheet)} \times \text{Total Unlawful area (m}^2\text{)} = R$$

$$R1330 \times 88.5 \text{ (m}^2\text{)} = R117\,705.00$$

970			1%	3%	5%	7%	10%	15%	20%
Area contravening MPBL	(m²)	88.5							
	Value of building work	R 1 330.00							
Value of the building work as per BDM (unit price)									
		R 117 705	R 1 177.05	R 3 531.15	R 5 885.25	R 8 239.35	R 11 770.50	R 17 655.75	R 23 541.00

- An amount which is not more than 100% of **R117 705.00** may be imposed as an administrative penalty.
- The building valuation for building work greater than 40m² have been attached as **Annexure D**.
- The high valuation is questioned and this office is of the opinion that such a valuation is too excessive for an open covered structure.

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

- A portion of the unauthorised carport encroach the 5m street and 3m common building lines as outlined in item 22 (f) (i) & (iii) of the DMS.
- The authorised carport is also in deviation of item 121(2) of the DMS as it has been erected along a declared metropolitan road (Darwin Road) where a 5m building line is applicable.

Duration

- The carport was constructed approximately 1 year ago. As evident from the extract below, the unauthorised carport was erected in 2018.



Gravity

- The unauthorised structure is non-habitable and open therefore, no negative safety, fire, health or any other hazard are envisaged.
- There is no heritage or any other overlay zone that is being contravened.
- Although no complaints have been lodged by the public, it came to the attention of the case officer that the owner has submitted plans for the

mere fact that he/she cannot sell the subject site without formal approved building plans.

Extent

- Portions of the unauthorised carport in deviation of the DMS measures 88.5m<sup>2</sup> in extent.
- The contravening area is 11% of the total site extent.

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

- No section 126 notice was served by LUMS enforcement as the owner only applied for the penalty after being informed by the case officer.
- The building inspector has not served any notice for the unauthorised building work due to no public complaints received.
- The unauthorised structure was built by the current owner.
- The applicant was not forthcoming with the information that the structure already existed when the initial application was made for permanent departure.
- As evident from the extract below, the applicant has not indicated these structures to be authorised and has only submitted the penalty case after being informed by the case officer.

Approximate age of existing buildings	30	Property extent	
Any restrictive title deed conditions affecting development on the property?	<input checked="" type="checkbox"/>	If Yes, please specify	NA
Is property encumbered by a bond?	<input checked="" type="checkbox"/>	If Yes, bondholder?	NA
Any unlawful landuse(s) on the property that relate to this application?	<input checked="" type="checkbox"/>	If Yes, has owner / operator been served with a notice in terms of the MPBL to rectify?	<input checked="" type="checkbox"/>
Any unlawful building work / structures on the property that relate to this application?	<input checked="" type="checkbox"/>	If Yes, has owner / operator been served with a notice in terms of the MPBL to rectify?	<input checked="" type="checkbox"/>
Is a purpose of this application to rectify a contravention in terms of the MPBL?	<input checked="" type="checkbox"/>	If Yes, then an application must also be made for the determination of an administrative penalty in terms section 42(r) of the MPBL. Section H on this form must be completed.	

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

- Not applicable to unauthorised building work.

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

- There is no concrete evidence confirming that the owner of the property has previously contravened this By-Law or any other planning law.

5.3 Having considered the factors mentioned above, we hereby recommend that no administrative penalty fee be imposed.

In view of the aforementioned considerations, it is the contention of this department **that an administrative penalty fee of R1500 for the unauthorised building work should be imposed.**

## 6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- The extent of the contravention 88.5m<sup>2</sup> (11%) is relatively small when considering the total size of the subject site (782m<sup>2</sup>).
- Although no complaints have been received from the public, the penalty fee is considered appropriate, considering the nature of the proposal being in deviation of development rules as prescribed within the base zone.
- The duration of the conduct is approximately 1 year.
- The applicant submitted the admin penalty application only after being informed to do so by the case officer.


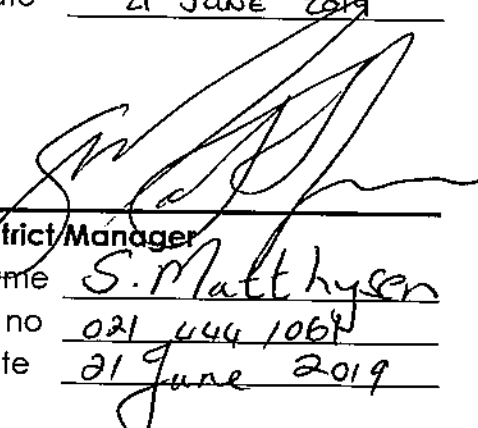
## 6 RECOMMENDATION

In view of the above, it is recommended that:

- That an administrative penalty in the amount of **R1500.00** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 314, Durbanville.

## ANNEXURES

Annexure A	Locality plan
Annexure B	Site development plan
Annexure C	Applicant's motivation
Annexure D	Extract of building valuation

		
<b>Section Head : Land Use Management (ACTING)</b>		Comment
Name	<u>DANETTE DE KLERK</u>	<u>SUPPORTED.</u>
Tel no	<u>021 444 1040</u>	
Date	<u>21 JUNE 2019</u>	
		
<b>District Manager</b>		Comment
Name	<u>S. Matthysen</u>	
Tel no	<u>021 444 1064</u>	
Date	<u>21 June 2019</u>	

# Annexure

## A

# PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

974

ANNEXURE : A1



## Overview

Erf:

District:

Allotment:

Suburb:

Ward:

Sub Council:



1:23 502

Notices Served



Support  
Received



Petition  
Signatory



Objections  
Received



Generated by:

Date:

File Reference:



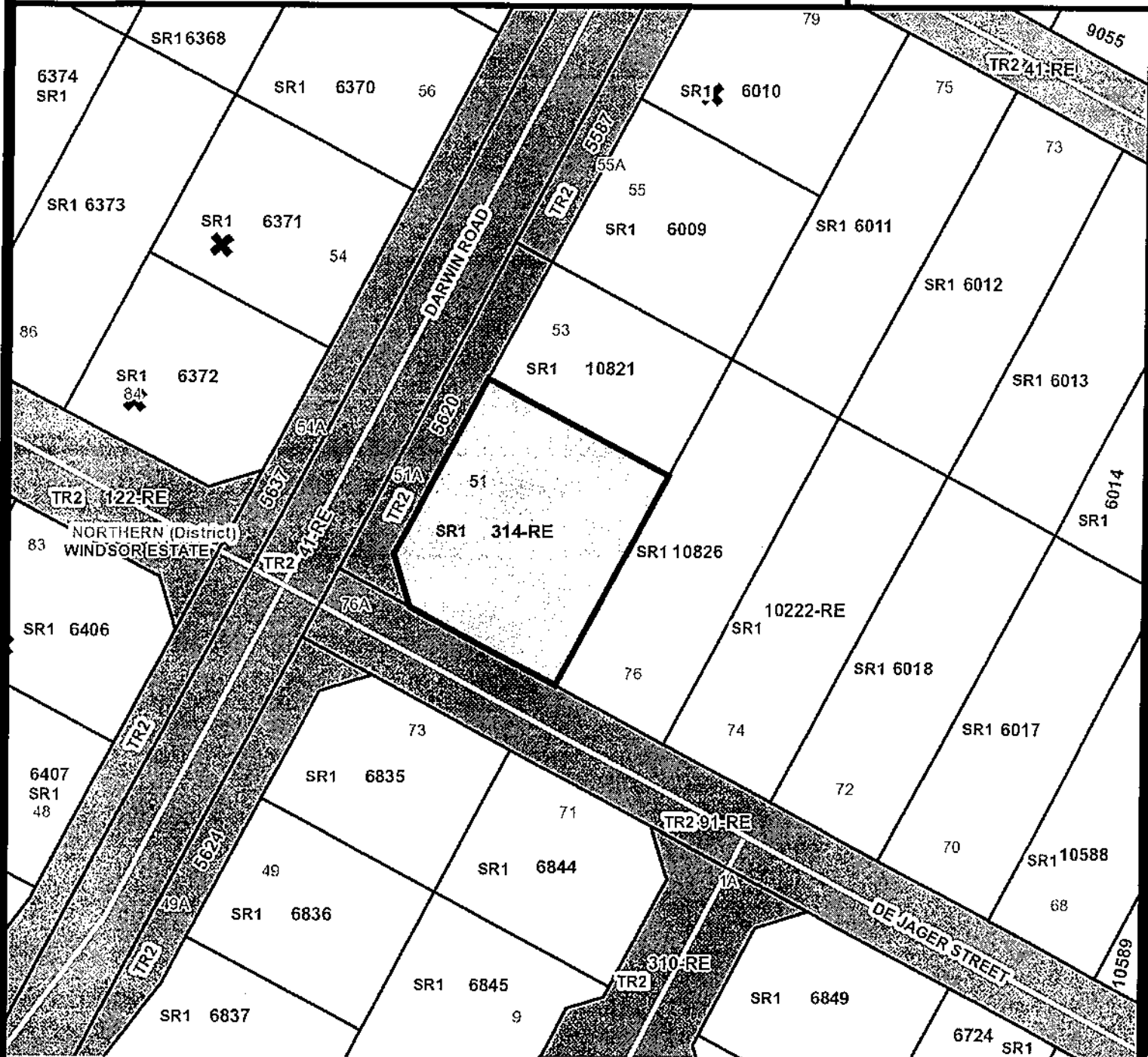
CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Making progress possible. Together.

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT  
LOCALITY MAP

975

ANNEXURE : 12



Overview

Erf:

District:

Allotment:

Suburb:

Ward:

Sub Council:



1:734

Notices Served



Support Received



Petition Signatory



Objections Received



Generated by:

Date:

File Reference:



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

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# Annexure

## C

Additional Motivation erf 314- kraaifontein  
51 Darwin str.

977

Admin Penalty for carport 0m in lieu of 5m

① - The carport was put up about a year ago ( 151.2 m<sup>2</sup>)

② The owner was brought under the impression (by contractor) that no plans was required for a carport because it is not a permanent structure and has no foundations or walls

③ The unlawful conduct was not stopped because the carport is still there

④ The owner has not contravened this by law before

Socio-economic impact:

A number of jobs was created while the building work was in progress

Compatibility with surrounding uses:

The properties in this area is all single residential There should therefore be no problem with compatibility

Impact on the external engineering services :

Only a carport and lean-to added, minimal impact

Impact on safety health and the surrounding community:

No impact

Impact on heritage :

The house could be around 50 years old, and of no historical interest . All the house in that area is of the same proximate age. So there is no impact on heritage

Impact on biophysical environment :

No impact

Traffic impact, parking, access and other related consideration :

There will be no additional people living in the house, so no impact.

Whether the imposition of conditions can mitigate an adverse impact of the proposed land use

The impact of this addition as discussed above will be minimal, Land is becoming a big issue of late and I feel the owners is actually helping by making the best use of this property

# Annexure

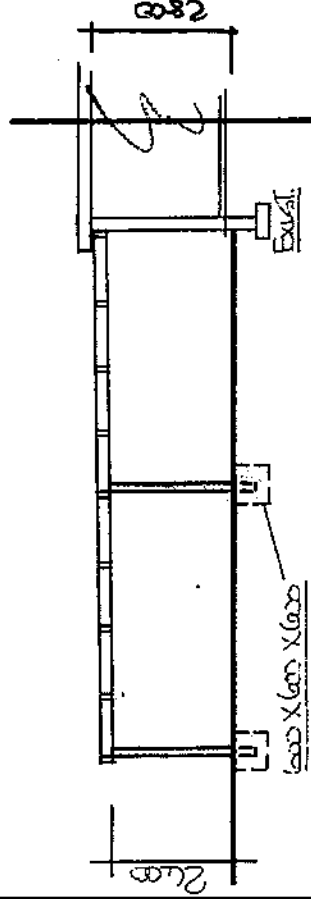
## B



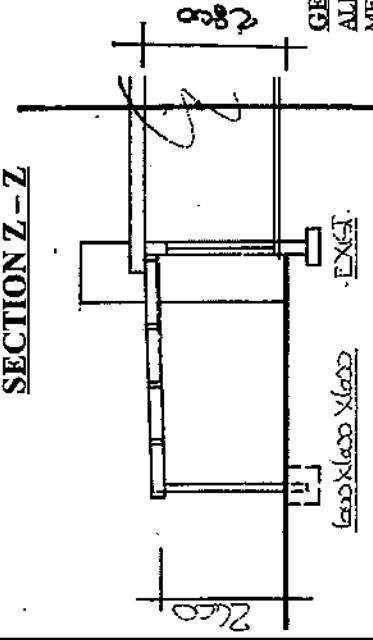
**CELL: 0836326367**

## SECTION X - X

**PAGE 1**



## SECTION Z-Z



## SECTION X - X

980

PROPOSED ADDITIONS - ERF 3144

51 DARWIN STR.

KRAAIFONTEIN

SCALE : 1:100

DATE : 29 - 08 - 2018

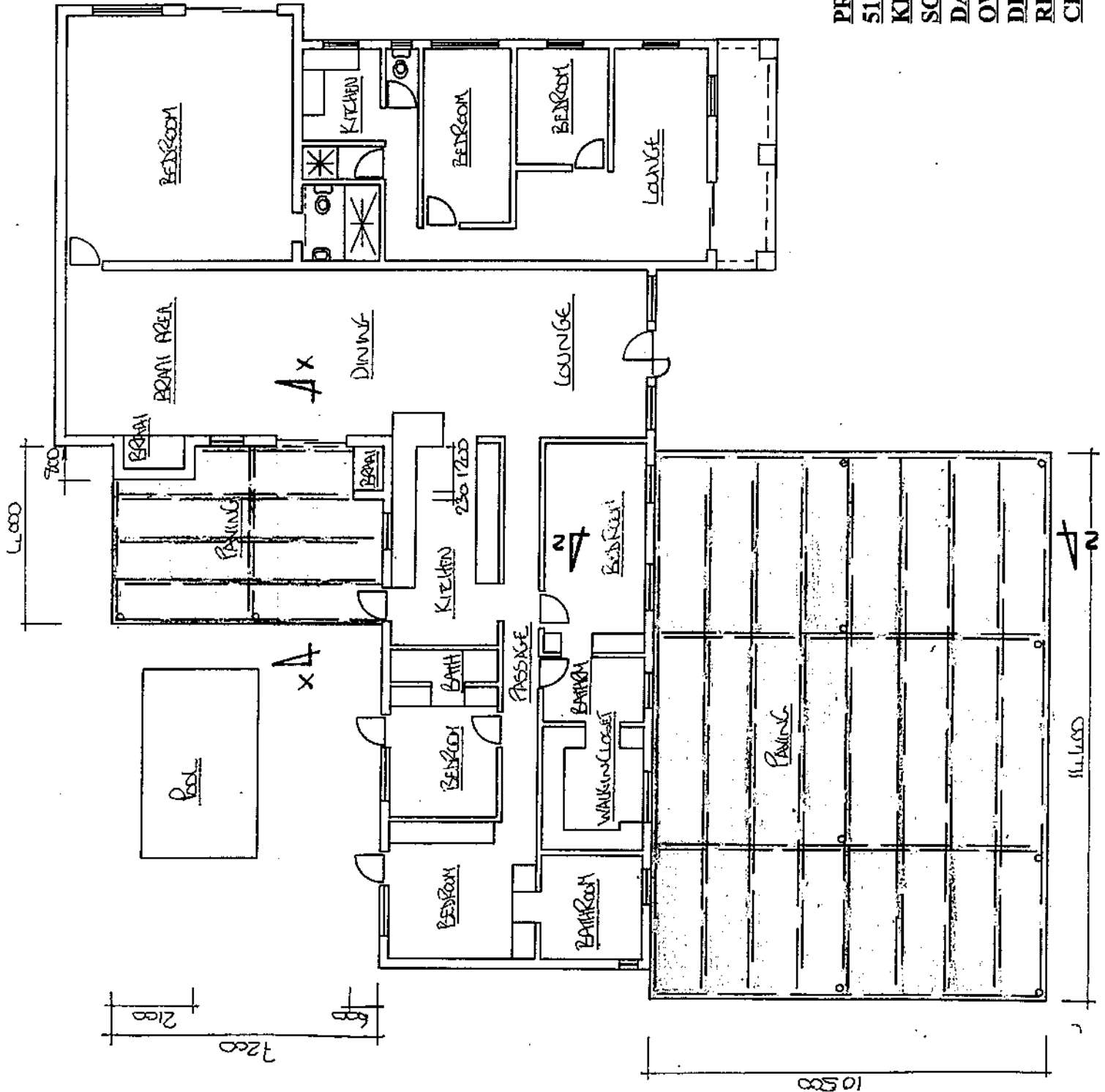
OWNER'S SIGNATURE : *Jaen Kotze*

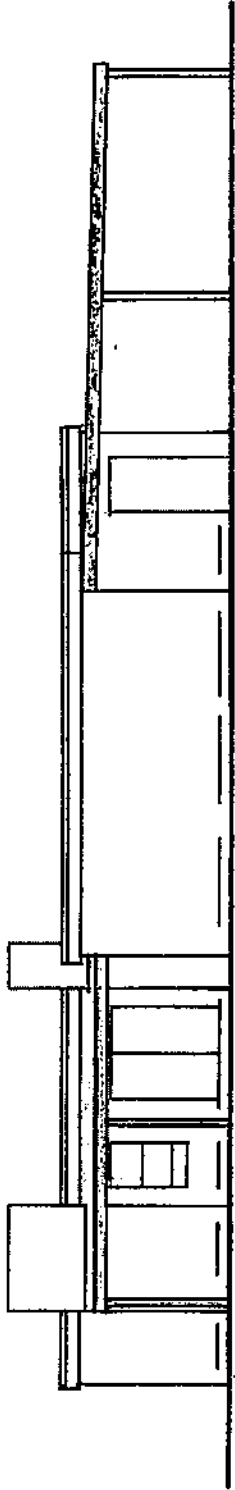
DRAWN BY : IAAN KOTZE

REG. NO. : PAD 21128

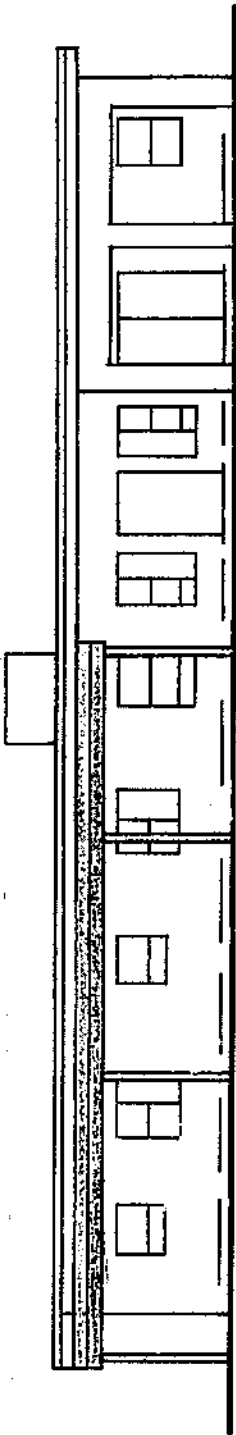
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**N.E. ELEVATION**



**N.W. ELEVATION**



**S.E. ELEVATION**

**LEAN-TO:**

1BR PROFILE LONGSPAN METAL AND 85% TRANSLUCENT SHEET (OVER WINDOW) AT 3° PITCH ON 150 X 50 PURLIN - RAFTERS AT 1000 c/c WITH 230 X 50 FASCIA - BEARERS AND CENTER BEARER ALL TIMBERS TO BE BOLTED TOGETHER FLUSH LEAN-TO BOLTED TO HOUSE AND 76 DIAMETER GALVANIZED POSTS.

**CARPORT:**

1BR LONGSPAN METAL SHEETS AT 3° PITCH ON 230 X 38 PURLIN - RAFTERS AT 1200 c/c WITH 230 X 50 FASCIA - BEARERS AND CENTER BEARERS AT 4780 c/c ALL TIMBERS TO BE BOLTED TOGETHER FLUSH CARPORT TO BE BOLTED TO HOUSE AND 76 DIAMETER GALVANIZED POSTS.

**RAINGOODS:**

125mm HALF ROUND PVC GUTTERS OR ALUMINIUM EXTRUSION GUTTERS AND 80 DIAMETER PVC GUTTERS ON 230 X 12 NUTEC OR 230 X 38 TIMBER FASCIA. ALL RAINWATER TO ROAD. FLASHING TO MANUFACTURERS SPECIFICATIONS TO JOINT OF ROOF AND WALLS.

981

**PROPOSED ADDITIONS - ERF 3124**

**51 DARWIN STR.**

**KRAAIFONTEIN**

**SCALE : 1:100**

**DATE : 29 - 08 - 2018**

**OWNER'S SIGNATURE : *W. K. Kotze***

**DRAWN BY : IAAN KOTZE**

**REG. NO. : PAD 21128**

**CELL : 0836326367**

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# Annexure

## D

Item No	Mat No	Mat Description	Build Code	Build Description	Sunday, 01 March 2015	Tuesday, 01 September 2015
1	100003614	Internal Alterations Non Residential	42	QS ESTIMATE	QS Estimate + 30%	QS Estimate + 30%
2	100003613	Internal Alterations Residential	42	QS ESTIMATE	QS Estimate + 30%	QS Estimate + 30%
3	100003717	MW NR Aviary			R 1 000.00	R 1 020.00
4	100003748	MW NR Awnings			R 3 040.00	R 3 080.00
5	100003720	MW NR Cellmast Greenfields			R 2 070.00	R 2 100.00
6	100003721	MW NR Cellmast Rooftop			R 2 070.00	R 2 100.00
7	100003732	MW NR Change room			R 2 250.00	R 2 280.00
8	100003722	MW NR Child's playhouse			R 900.00	R 920.00
9	100003735	MW NR Convert (Door / Window)			R 3 600.00	R 3 650.00
10	100003751	MW NR Covered Walkway			R 3 990.00	R 4 050.00
11	100003723	MW NR Cycle shed			R 2 250.00	R 2 280.00
12	100003725	MW NR Enclosed Balcony			R 1 000.00	R 1 020.00
13	100003726	MW NR Enclosed Braai/ Patio			R 2 600.00	R 2 640.00
14	100003737	MW NR Erection/Demolition-Internal Wall			R 4 500.00	R 4 560.00
15	100003724	MW NR Greenhouse			R 2 600.00	R 2 640.00
16	100003743	MW NR LP Gas Installations			At Cost	At Cost
17	100003736	MW NR Opening in wall			R 1 200.00	R 1 220.00
18	100003727	MW NR Open-sided Shelter/Carport <40m²			R 1 310.00	R 1 330.00
19	1E+08	MW NR Open-sided Shelter/Carport >40m²			R 1 310.00	R 1 330.00
20	100003746	MW NR Patio Cover			R 1 310.00	R 1 330.00
21	100003730	MW NR Pergola			R 970.00	R 990.00
22	100003731	MW NR Pool			R 4 950.00	R 5 020.00
23	100003716	MW NR Poultry house			R 900.00	R 920.00
24	100003749	MW NR Precast Store			R 4 390.00	R 4 450.00
25	100003733	MW NR Re-roofing			R 2 000.00	R 2 030.00
26	100003734	MW NR Roof Deviation			R 1 470.00	R 1 490.00
27	100003740	MW NR Shed			R 2 250.00	R 2 280.00
28	100003739	MW NR Solar Water Heater<12m² (NonRoof)			R 5 000.00	R 5 070.00
29	100003738	MW NR Solar Water Heater<6m² (Roof)			R 1 200.00	R 1 220.00
30	100003718	MW NR Solid fuel store			R 2 250.00	R 2 280.00
31	100003745	MW NR Staircase			R 2 490.00	R 2 530.00
32	100003744	MW NR Stoep			R 1 310.00	R 1 330.00
33	100003747	MW NR Timber Deck			R 2 490.00	R 2 530.00
34	100003719	MW NR Tool shed			R 900.00	R 920.00
35	100003742	MW NR Verandah			R 1 000.00	R 1 020.00
36	100003750	MW NR Walkway			R 2 820.00	R 2 860.00