



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

CASE ID	70406069
CASE OFFICER	Yunus Hugo
CASE OFFICER PHONE NO	021 684 4349
DISTRICT	Cape Flats
REPORT DATE	27/02/2019

ITEM NO **MPTSW49/03/19**

**WARD 44: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 122694, CAPE TOWN, 36 FINK ROAD BRIDGETOWN.**

**1 EXECUTIVE SUMMARY**

Property description	Erf 122694, Cape Town
Property address	36 Fink Road, Bridgetown
Site extent	313m <sup>2</sup>
Current zoning	Single Residential 1: Conventional housing (SR1)
Current land use	Dwelling house.
Overlay zone applicable	None.

Submission date	10/05/2018
Subject to PHRA / SAHRA	No.
Any unauthorised land use / building work?	Yes-first floor addition to existing dwelling and second dwelling.
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. 1523
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

- Erf 122694, Cape Town is zoned Single Residential 1 (SR1) and unauthorised building work exists in the form of a second dwelling (rear) and a first floor addition to the existing dwelling. The admin penalty will solely relate to the portion of the first floor contravening the 3m common boundary building line as the height of the structure triggers the departure.
- Portions of the unauthorised work is in contravention of the Development Management Scheme (DMS).

## 4 SUMMARY OF APPLICANT'S MOTIVATION

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

- This property was purchased by Ms G Salie and registered on 8 October 2014 in the deeds office.
- The owner officially took occupation of the property on 1<sup>st</sup> April 2015, after successfully evicting the previous owners.
- The property was purchased with all the existing buildings on site which is the second dwelling on the ground floor and the first floor extensions to the main dwelling.
- Ms Salie went to the City of Cape Town office to enquire whether there were any approved building plans for erf 122694 and was informed that there were no plans submitted for the second dwelling or any other extensions.

- It must be noted that all extensions were done prior to the current owner taking ownership of the property in October 2014.
- Ms Salie have no knowledge about the duration of the unauthorised building work.

## 5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised 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 for unauthorised building work

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

#### 5.2.1 Unauthorised building work:

<u>First floor addition (height triggers a departure)</u>		
Value per m <sup>2</sup>	=	R7060
Total unlawful area	=	34m <sup>2</sup>
Calculated value (value x area)	=	R240 040
<b>Total value</b>	=	<b>R240 040</b>

An amount which is not more than 100% of **R240 040** 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 – A portion of the unauthorised first floor addition to the existing dwelling contravenes the 3m common boundary building line (north) as a result of the height exceeding the 4m height provision.

Duration – Aerial photography indicates that the second dwelling and the additions to the existing dwelling were erected approximately in 2002 which is many years prior to the current owner purchasing the property. The date of purchase has been confirmed as being 8<sup>th</sup> October 2014. The duration of the unauthorised building work is considered to be long.

Gravity – It is unlikely that the unauthorised structure will threaten the health, safety and wellbeing of the community. The gravity is considered minor.

Extent – The portion of the unauthorised building work that contravenes the Development Management Scheme measures approximately 34m<sup>2</sup>.

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

The owner has applied for an administrative penalty for the unauthorised building work.

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

The unauthorised second dwelling and first floor additions to the existing dwelling is fully constructed.

**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 owner of the property has not previously contravened this By-law or any other planning law.

- 5.4 In view of the above considerations, this Department recommends an administrative penalty of **R0** of the value of the unauthorised building work.

**6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarised as follows:

- 6.1 Portions of the unauthorised building works contravene the Development Management Scheme.
- 6.2 The contravention is of a low gravity and medium in extent.
- 6.3 The owner of the property has not previously contravened this By-law or any other planning law.
- 6.4 The previous owner was responsible for the contravention.

## 7 RECOMMENDATION

1526

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R0 be approved in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 122694, Cape Town with regard to the unauthorised building work as per the plan attached hereto as annexure B

## ANNEXURES

Annexure A	Locality Plan: Metro context
Annexure A-1	Locality Plan: Local context
Annexure B	Site Development Plan showing building contraventions
Annexure C	Motivation



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### Section Head: Land Use

Comment

Name A McCann

Tel no 021 6844341

Date 4 March 2019



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### District Manager

Name Chad Newman

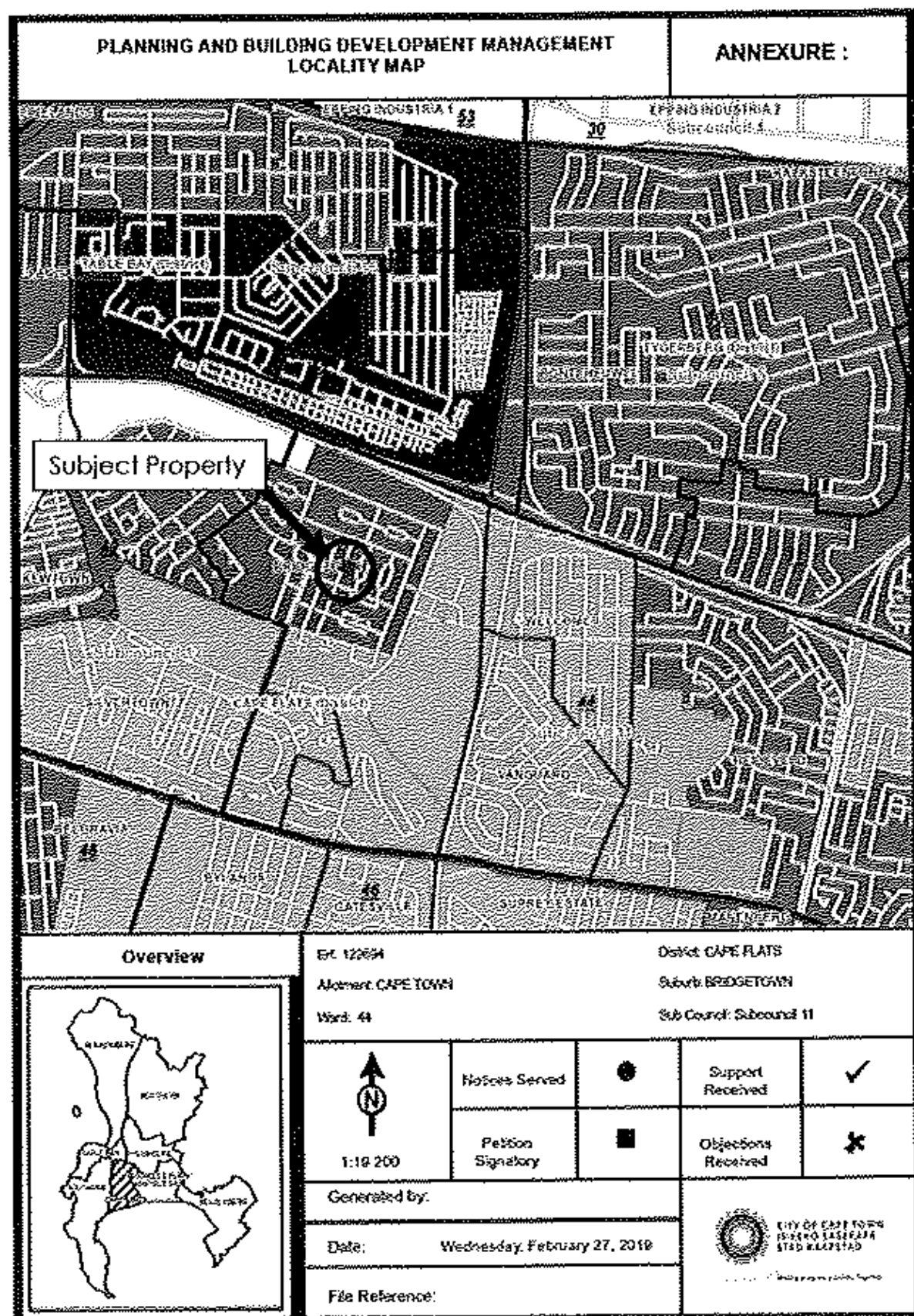
Comment

Tel no 021 684 4310

Date 04 March 2019

1527

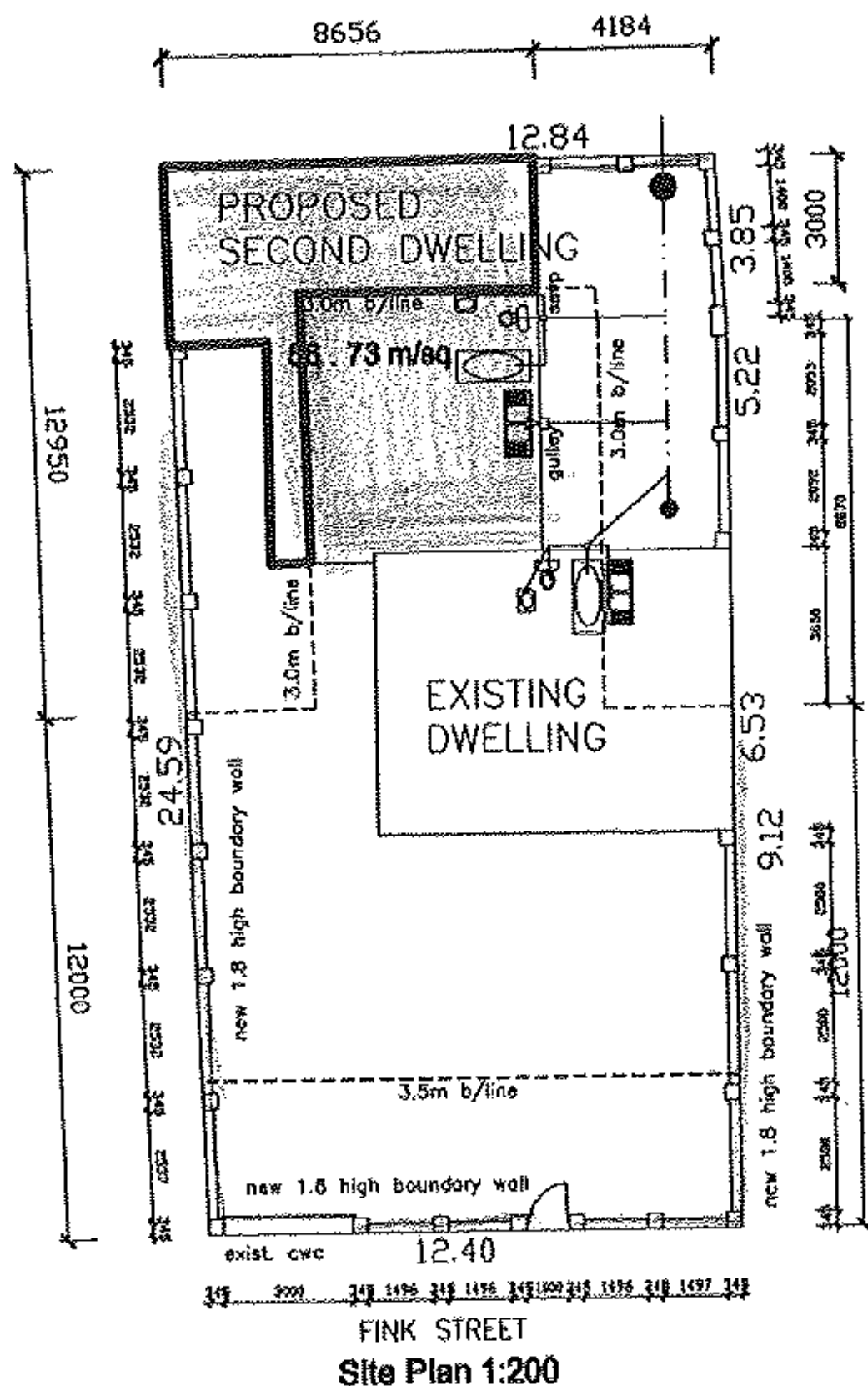
**ANNEXURE A: LOCALITY PLAN – METRO CONTEXT**





# ANNEXURE B: SITE DEVELOPMENT PLAN SHOWING CONTRAVENTION

1529





<b>ANNEXURE C: MOTIVATION</b>
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The City of Cape Town  
 Planning and Building Development Management  
 Ledger House  
 Athlone  
 7760

**Motivation: Administrative penalty: Erf 122694**

With reference to drawing no 17 697 22 dated 16 April 2018 drawn by Isgaak Lutta refers.

This property was purchase by Ms G Salie and registered on 8 October 2014 in the deeds office. The owner officially took occupation of the property on 1 April 2015, after successfully evicting the previous owners. The property was purchase with all the existing buildings on site which is the second dwelling on ground floor and the first floor extensions to the existing dwelling.

The estate agent was on several occasion prior to the sale going through if there were approved plans for the property.

Mrs. Salie went personally to the City of Cape Town to enquired whether there were any approved building plans for erf 122694. She was informed according to their records no plans were submitted

Application are hereby made for the determination of an administrative penalty in respect of the second dwelling on the ground floor as well as the first floor which was built without the necessary approval.

It must be noted that all these extensions were made prior to her taking ownership of the property in October 2014.

The size of the unauthorized building work are as follows:

Second dwelling: 56 sqm  
 First floor additions: 66 sqm  
 Total area: 130 sqm

Ma Salie have no knowledge when the construction has started and completed

Regards

Isgaak Lutta

Date: 5 May 2018