



## REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70453474				
CASE OFFICER	A. ESAU				
CASE OFFICER PHONE NO	021 444 4627				
DISTRICT	HELDERBERG				
REPORT DATE	JUNE 2019				
INTERVIEW REQUESTED	APPLICANT	YES		NO	X
	OBJECTOR(S)				X

ITEM NO **MPTSE25/06 /19**

**APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 1460, 37 BERRYDELL AVENUE, BRIZA, SOMERSET WEST**

### 1 EXECUTIVE SUMMARY

Property description	Erf 1460, Somerset West
Property address	37 Berrydell Avenue, Briza
Site extent	1433.37m <sup>2</sup>
Current zoning	Single Residential 1 : (SR1)
Current land use	Residential
Overlay zone applicable	None

Submission date	25 April 2019
Subject to PHRA / SAHRA	n/a
Any unauthorised land use / building work?	Yes, unlawful conversion of an existing garage into a second dwelling and timber deck encroaching the 3m common building 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	No

applied for.	
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, the applicant was advised when submitting building plans for additions to the property than an administrative penalty must first be submitted as no building plans were approved for the unlawful conversion.

## 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

## 3 BACKGROUND / SITE HISTORY

The subject property is located at 37 Berrydell Avenue, Somerset West, in the residential suburb of Briza. (See Annexure A). The property is currently zoned Single Residential 1, measuring 1433.37m<sup>2</sup> in extent.

The property is developed with a residential dwelling, tool-shed, shade nets and swimming pool. The garage originally approved on site, was unlawfully converted into a second dwelling and timber deck constructed.

The property is located in the vicinity of properties all comprising of a similar zoning and takes access from Berrydell Avenue which connects to the prominent Firmount Road.

The subject property is bounded by restrictions stipulated in the title deed and this, together with the relaxation of the building lines applicable to the unlawful structures and regularisation thereof will be dealt with under delegated authority once the determination of the administrative penalty has been concluded.

## 4 SUMMARY OF APPLICANT'S MOTIVATION

- No formal motivation has been provided pertaining to the unlawful structures.

## 5 ASSESSMENT OF APPLICATION

- 5.1 The unauthorized building work is in contravention of the Development Management Scheme.
  - I. Contravention of the 3m common building line adjacent to erf 1461 to 2.8m (second dwelling) and 0m (timber deck) respectively.
- 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

Value of building cost (timber deck)	: R2 530
Area of contravention (m <sup>2</sup> )	: 25.438m <sup>2</sup>
Calculation	: 25.438m <sup>2</sup> x R2 530
=	: R645 358.14
Value of building cost (Second dwelling)	: R5 720
Area of contravention (m <sup>2</sup> )	: 2.24m <sup>2</sup>
Calculation	: 25.438m <sup>2</sup> x R2 530
=	: R12 812.80
<b>Total cost</b>	<b>: R658 170.94</b>

## 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**

The structure in question is the existing timber deck and portion of the second dwelling erected over the prescribed 3m common building line. There is no evidence to suggest that the unlawful structure poses any safety and health hazards.

The unlawful structures can be considered minor in extent as it is merely the conversion of the existing garage to accommodate the second dwelling and timber deck.

The overall extent of the contraventions is approximately 28m<sup>2</sup>. It is common structures generally associated with residential dwellings as the structures are utilized as an additional access to the residential dwelling.

As per motivation and aerial imagery, it is clear the unlawful structure was constructed during 2010. This can be considered a considerable time that the structure has existed.

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

The owner is responsible for the unlawful conversion of the garage and first floor timber deck.

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

Yes, the structure exists and utilized by the current owner.

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

There is no evidence of the owner being involved in previous contraventions of the By-Law.

- 5.4 In view of the aforementioned considerations in terms of section 129(8) and the recent amendments to section 129 this department recommends that an amount of **R1200** administrative penalty be applicable.

## 6 REASONS FOR DECISION

Reasons for the recommended decision may be summarized as follows:

- The current owner is responsible for the unauthorized building work.
- The unlawful structures are ancillary to the main dwelling and poses no threats, thus the gravity of the contravention is minimal.
- The duration of the contravention was completed approximately 2 years ago.

## 7 RECOMMENDATION

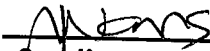
In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R1200** for the unauthorized building work and conversions be determined in terms of section 98(b) of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 1460, 37 Berrydell Street, Somerset West, Plan Number 1808-1 – Dated 11 April 2019.

8. ANNEXURES

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Annexure A      Locality Plan  
Annexure B      Building Plan  
Annexure C      Applicant's Motivation


  
**Section Head : Land Use  
Management**  
Name Janine Williams  
Tel no 021 444 4623  
Date 7 June 2019

Comment

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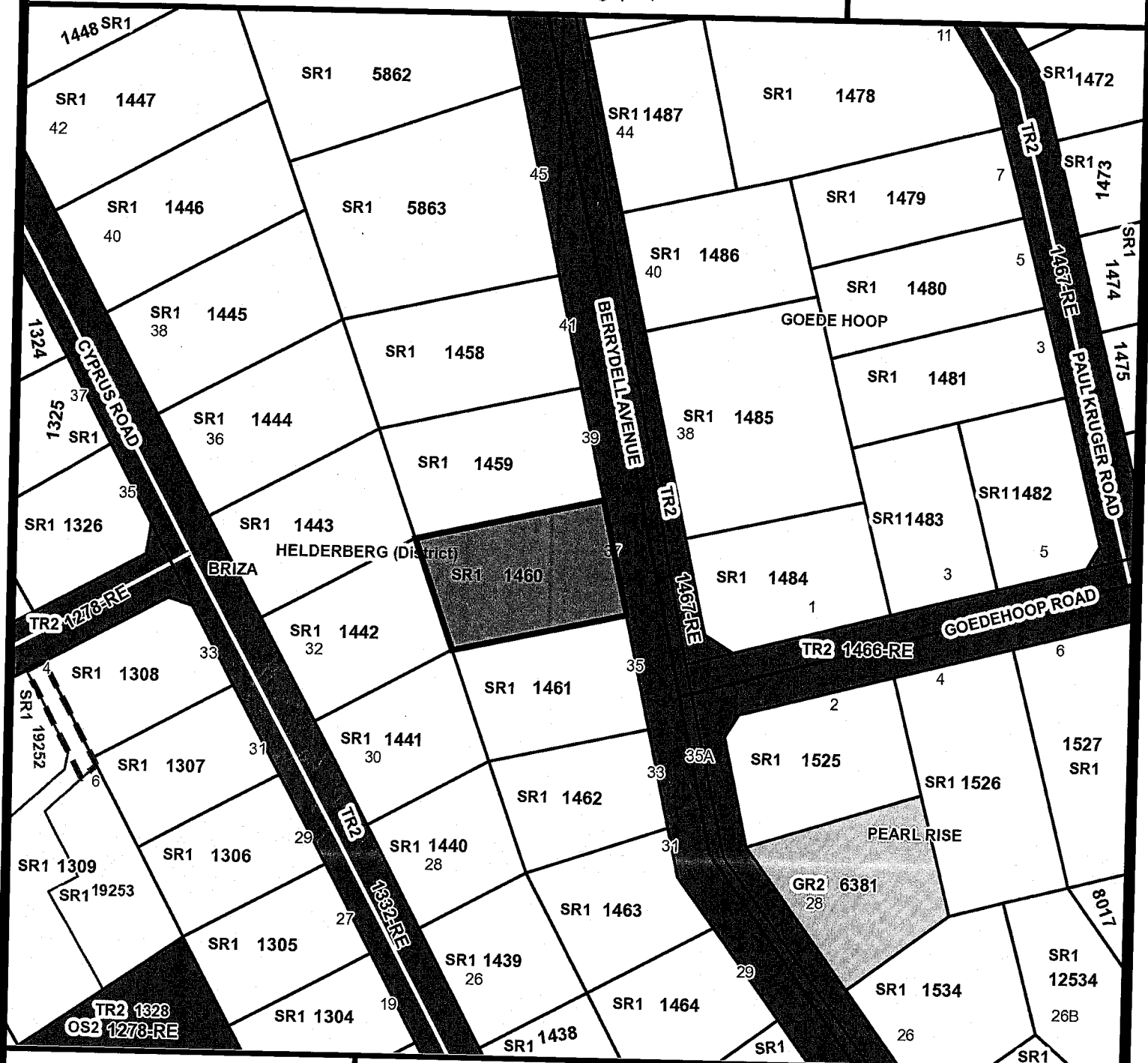
  
**District Manager**

Name DAWN VISSAR  
Tel no 021 444 4618  
Date 7/6/2019

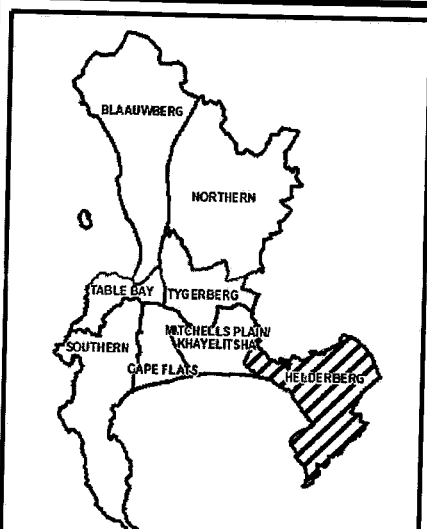
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## Overview



Erf: 1460

Allotment: SOMERSET WEST

Ward: 15

District: HELDERBERG

Suburb: BRIZA

Sub Council: Subcouncil 24



1:1 463

Notices Served



Support Received



Petition Signatory



Objections Received



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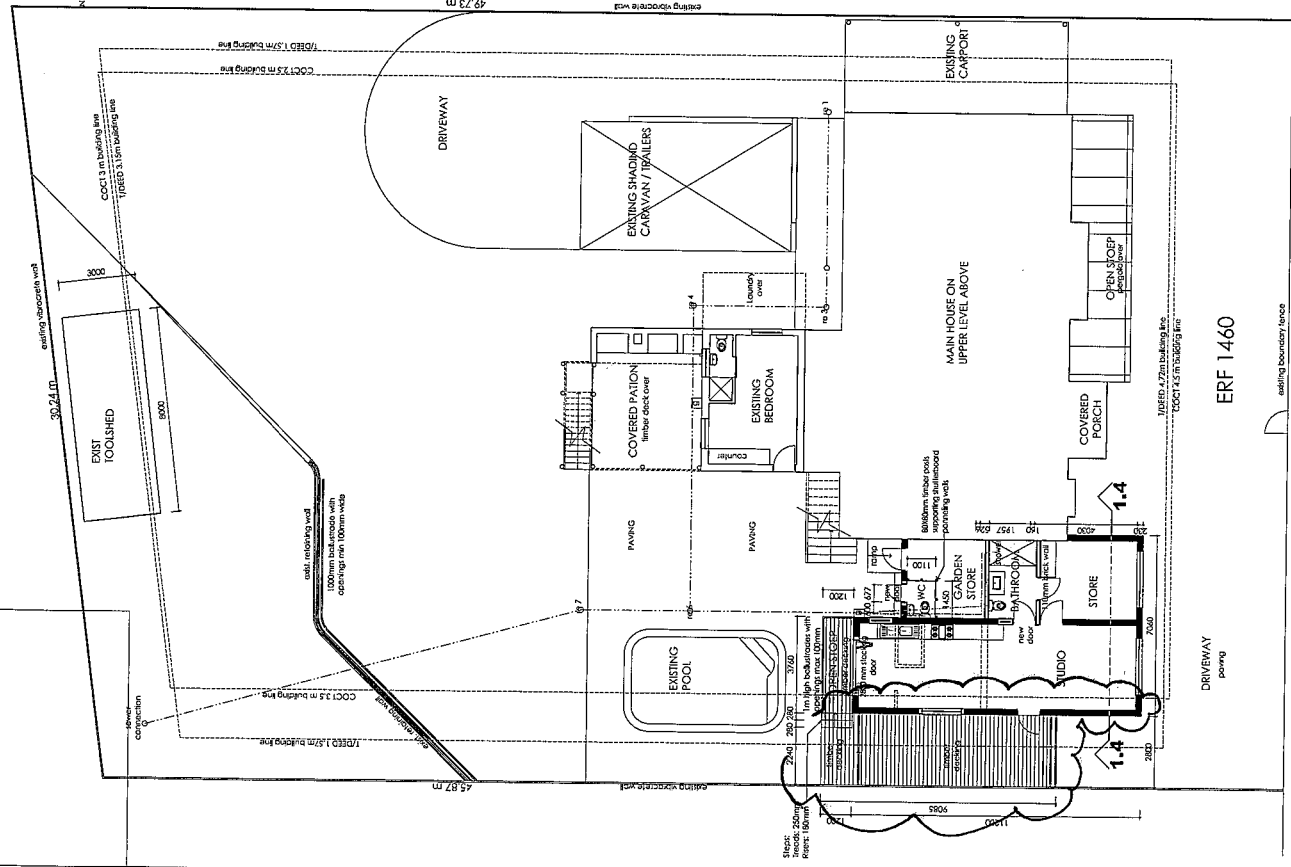
Date:

Friday, June 7, 2019

CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Making progress possible. Together.

100



CITY OF	LANDING AREA (sq ft)	FLOOR COVERING	WALLS (sq ft)	MAX HEIGHT ABOVE BASE LEVEL	BEDDING LINES		
					15" TOP OF ROCKS TO WALHPATE	SHIRT SLOUENT	15" SLOUENT
	1400 sq ft	N/A	1000 sq ft	9 ft	11 m	4.5 m	3 m
							2 m

SCALE: 1 : 100;

SCALE: 1 : 100;

# Irene le Roux

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Somerset West  
irene@leroux.co.za  
083 658 4298  
SACAP REG : D2716

## MOTIVATIONAL REPORT:

**Erf 1460, 37 Berrydel Avenue, Briza, Somerset West.**

I am herewith applying for **Administrative Penalty**:

The existing single garage has been modified into second dwelling unit. This contravenes the Title Deed Limitation of one dwelling unit. The LUM application to remove restrictive condition will be made upon finalisation of this current application.

The property consisted of one house, and a single garage with storage room adjacent to it. The single garage has been altered into a flatlet, as shown on plan.