



CITY OF CAPE TOWN
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REPORT TO: MUNICIPAL PLANNING TRIBUNAL

CASE ID	70413832
CASE OFFICER	Yunus Hugo
CASE OFFICER PHONE NO	021 684 4349
DISTRICT	Cape Flats
REPORT DATE	26/02/2019

ITEM NO MPTSW52/03/19

WARD 48: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 134259, CAPE TOWN, 39 TURFLYN WALK PINATI ESTATE.

1 EXECUTIVE SUMMARY

Property description	Erf 134259, Cape Town
Property address	39 Turflyn Crescent, Pinali Estate
Site extent	116m ²
Current zoning	Single Residential 1: Conventional housing (SR1)
Current land use	Dwelling house.
Overlay zone applicable	None.

Submission date	02/07/2018
Subject to PHRA / SAHRA	No.
Any unauthorised land use / building work?	Yes-unauthorised veranda and outbuilding (rear).
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	No.

by the MPT	
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?	Yes, building inspector served notice for unauthorised building work.

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

3 BACKGROUND / SITE HISTORY

- Erf 134259, Cape Town is zoned Single Residential 1 (SR1) in terms of the Development Management Scheme. Unauthorised building work exists in the form of a verandah and an outbuilding (rear).
- Portions of the unauthorised work are 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:

- The homeowner states that the need arose for a domestic staff quarters and verandah and after being ill advised that they thought they did not need plans as a previous structure was approved for the back section.
- He states that they were then served with a notice.
- He further states that it was not their intention to not follow process in the correct way and humbly plead for leniency from council as he is in the process of correcting the wrong and getting all approvals.

5 ASSESSMENT OF APPLICATION

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

- 1552
- 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 m² (as provided in the spreadsheet) x Total Unlawful area (m²) = R

5.2.1 Unauthorised building work:

Verandah

Value per m ²	=	R 1 020
Total unlawful area (verandah)	=	4.8m ²
Calculated value (value x area)	=	R4896

Outbuilding

Value per m ²	=	R 5 720
Total unlawful area (outbuilding)	=	7.18m ²
Calculated value (value x area)	=	R41069

Total value = R45 965

An amount which is not more than 100% of **R45 965** 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 verandah contravenes the 1m street (Turllyn Walk) boundary building line and a portion of the outbuilding contravenes the 1m common boundary building line(south) being 7.18 linear meters over what is permissible (60%).

Duration – The applicant stated that the duration of the contravention is 2 years in the LUMS form. Aerial photography indicates that the outbuilding was erected approximately in 2016 which is 2-3 years ago. Aerial imagery does not show the verandah as being constructed, however the applicant confirmed that it is in fact built and complete. The duration of the unauthorised outbuilding is considered to be relatively long, and the verandah short.

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 11,98m².

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 verandah and outbuilding are 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 **R500** 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 work contravene the Development Management Scheme.
- 6.2 The contravention is of a low gravity and relatively minor extent.
- 6.3 The owner of the property has not previously contravened this By-law or any other planning law.

7 RECOMMENDATION

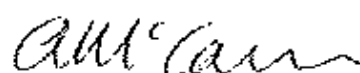
In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of **R500** be approved in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 134259, Cape Town with regard to the unauthorised building work.

ANNEXURES

1554

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



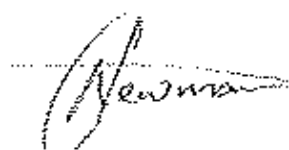
**Section Head : Land Use
Management**

Comment

Name A McCann

Tel no 021 6844341

Date 4 February 2019



District Manager

Name Chad Newman

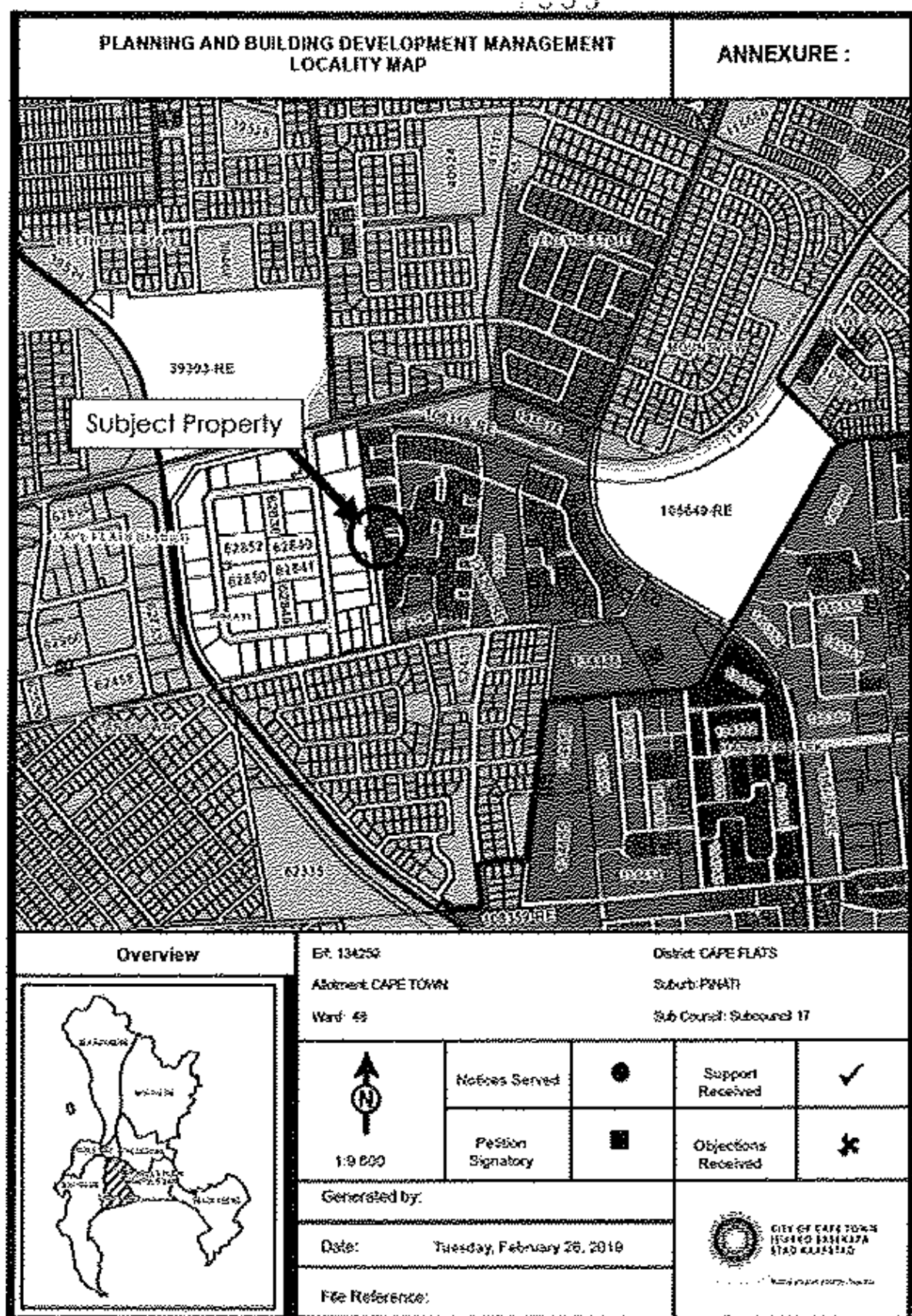
Comment

Tel no 021 684 4310

Date 05 March 2019

ANNEXURE A: LOCALITY PLAN – METRO CONTEXT

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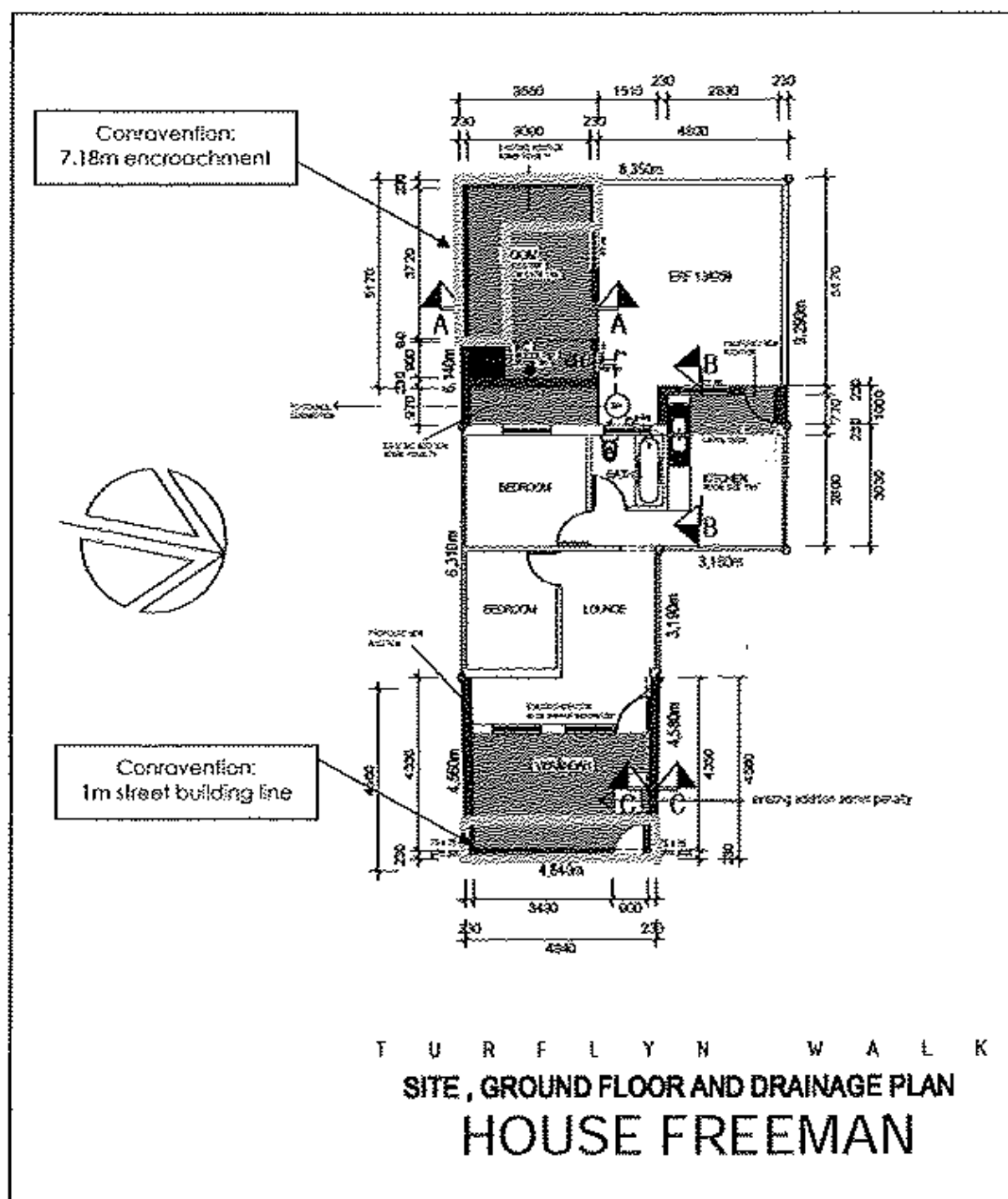


ANNEXURE A-1: LOCALITY PLAN – LOCAL CONTEXT

1556

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :									
Overview 		ERF 134259 Allotment: CAPE TOWN Ward: 48 District: CAPE FLATS Suburb: PHAYI S.A. Council: Subarea 17									
		<table border="1"> <tr> <td>Noices Served</td> <td><input checked="" type="checkbox"/></td> <td>Support Received</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Petition Signatory</td> <td><input checked="" type="checkbox"/></td> <td>Objections Received</td> <td><input checked="" type="checkbox"/></td> </tr> </table>		Noices Served	<input checked="" type="checkbox"/>	Support Received	<input checked="" type="checkbox"/>	Petition Signatory	<input checked="" type="checkbox"/>	Objections Received	<input checked="" type="checkbox"/>
Noices Served	<input checked="" type="checkbox"/>	Support Received	<input checked="" type="checkbox"/>								
Petition Signatory	<input checked="" type="checkbox"/>	Objections Received	<input checked="" type="checkbox"/>								
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Date: Tuesday, February 28, 2018											
File Reference:											

ANNEXURE B: SITE DEVELOPMENT PLAN SHOWING CONTRAVENTION



ANNEXURE C: MOTIVATION

1558

ERF 134259
38 Turflyn Walk
Hanover Park
7800
26 June 2018

MOTIVATION FOR ADMIN PENALTY

The need arose for a domestic quarters and verandah and after being ill advised that we do not need plans as a previous structure was approved for the back section. We were served with a notice to submit plans. This was not our intention to not do the process the correct way and humbly plead for leniency with council as we are in the process of correcting the wrong and getting all approvals. We trust that you understand.

Yours faithfully