



## REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70434795
CASE OFFICER	A Solombela
CASE OFFICER PHONE NO	021 400 3455
DISTRICT	Northern
REPORT DATE	September 2019
INTERVIEW REQUESTED	APPLICANT OBJECTOR(S)
	YES
	NO
	✓
	✓

ITEM NO **MPTNE16/10/19**

**WARD 105: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF PORTION 19 OF FARM 725, 53 LUCULLUS ROAD, PAARL FARMS**

### 1 EXECUTIVE SUMMARY

Property description	Portion 19 of Farm 725 Paarl Farms
Property address	53 Lucullus Road
Site extent	4,8757 hectares
Current zoning	Agricultural zoning (AG)
Current land use	Residential and storage facility
Overlay zone applicable	No

Submission date	07-08-2019
Subject to PHRA / SAHRA	N/a
Any unauthorised land use / building work?	The land use contravention entails containers used for storage of drilling equipment and office or workshop.
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	No

of an administrative penalty?	
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## 2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal

## 3 BACKGROUND / SITE HISTORY

The subject property is situated in the Paarl Farms area and zoned Agricultural zoning which permits as of right agriculture, intensive horticulture, dwelling house, riding stables, environmental conservation use, environmental facilities, rooftop base telecommunication station and additional use rights.

Consent use are additional dwelling units, guest house, hotel, tourist accommodation, tourist facilities, intensive animal farming, harvesting of natural resource, mine, utility service, freestanding base telecommunication station, wind turbine infrastructure, aquaculture, animal care centre, farm shop, renewable energy structure, veterinary practice and agricultural industry.

The current use of storing drilling equipment is therefore not permitted within the primary use rights of the Development Management Scheme (DMS).

Land use law enforcement conducted a site inspection on 06-03-2018 after a complaint from one of the surrounding property owners was received. The findings of this inspection were that of eight (8) shipping containers with heavy machinery and tools stored on the site.

On the 14-03-2018 a site inspection conducted by law enforcement officer revealed that the property is being used for storing drilling equipment on the property concerned. Notice was subsequently served by enforcement department.

On 07-06-2018 an application for temporary land use departure was submitted for storage of drilling equipment was received by this department. This application was later withdrawn due to the outstanding information not being submitted timeously.

This application is therefore for the determination of an administrative penalty for the unlawful activity that is currently operational on the property.

## 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 current use is for the storage of drilling equipment with containers.
- No building plans have been approved.
- The storage is of a limited scale, located on a small portion in relation to the entire property.
- An application for temporary departure was submitted in order to accommodate the containers and the drilling equipment on the property.

## 5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorized land use is in contravention with the rules of the Development Management Scheme.
- 5.2 In terms of section 129(7) (a) of the By-Law, an administrative penalty for a land use contravention may not be more than 100% of the municipal valuation of the area that is used unlawfully.

### Administrative Penalty: Calculation

#### 5.1.1 Unauthorized land use

- **Property value:** R6 220000
- **Property size:** 4,8757 hectares
- **Area of the unauthorized use:** 14 384m<sup>2</sup>

$$\frac{\text{Total Municipal Value of property}}{\text{Total area of property (m}^2\text{)}} \times \text{Total Unlawful Area (m}^2\text{)} =$$

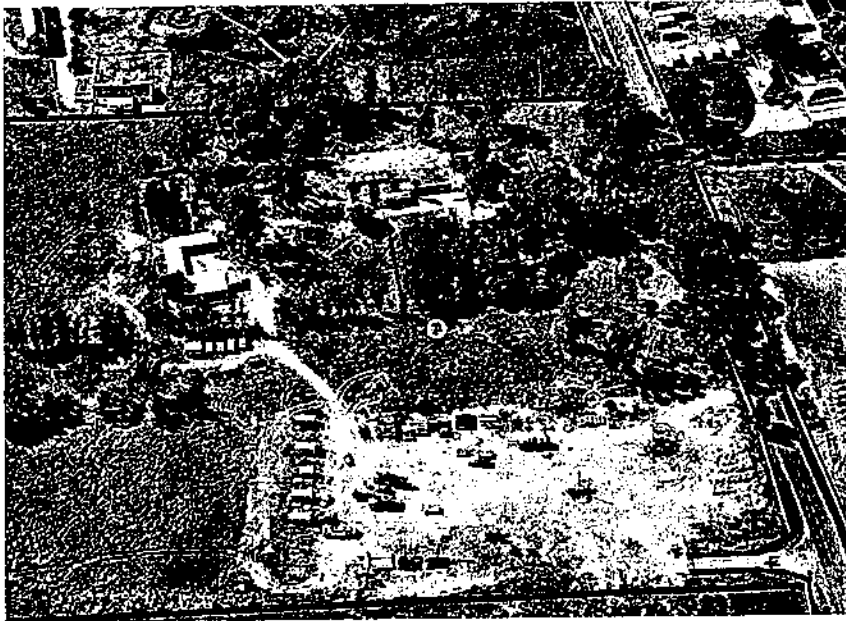
$$\frac{622\,0000}{48757\text{ (m}^2\text{)}} \times 14\,384\text{ (m}^2\text{)} = R18\,34987.39$$

1% of total value	2% of total value	5% of total value	10% of total value	20% of total value
R 18 349.87	R 36 699.74	R 91 749.3	R 183 498.74	R 366 997.47

- 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 contravention relates to the storage of drilling equipment that is currently in operation on the property without obtaining prior approval from Council. The duration of the unlawful use is just over 11 months. The proposed uses on a portion of the site are estimated to be 14.384m<sup>2</sup> in extent. It can be seen on the picture below that the extent is relatively small compared to the entire property size. The extent of the contravention is an estimate on the diagram provided by the applicant, as no actual extent of contravention provided on applicant's motivation.



The nature of the activity for storage relates to agricultural zone having to accommodate heavy vehicles collecting and delivery of drilling equipment is not compatible with the zoning.

The land owner was reluctant to submit this application as they have indicated in their motivation that the proposal is not in contravention of the Bylaw but are submitting the application as Council cannot approval the building plan without the approval of this administrative penalty.

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

The land owners have indicated that they were unaware that the proposal is not compliant with the Bylaw and has submitted the required applications.

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

The unauthorized activity is still in operation.

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

Land Use Enforcement department is currently dealing with the illegal land use aspect and the case is being prepared for court.

5.4 In view of the above consideration, this department recommends an administrative penalty of R 18 000 be imposed.

## **6 REASONS FOR DECISION**

Reasons for the recommended decision may be summarized as follows:

- The extent of the unauthorized use is considered a small scale considering the size of the property.
- The duration of the unlawful use is not long and the owner has indicated that they were not aware of any contravention of the Bylaw.

- The nature of the contravention is not considered compatible with the zoning and the gravity is serious.
- 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:

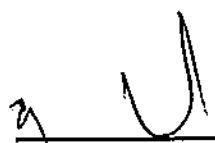
- a) That an administrative penalty in the amount of **R 18 000** be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 725, Joostenbergvlakte for the unauthorised storage of containers and drilling equipment contravention and such penalty be approved in terms of section 98 (b) of the said By-Law.

## ANNEXURES

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

  
\_\_\_\_\_  
**Section Head : Land Use Management**      Comment

Name      Sean Van Rensburg      \_\_\_\_\_  
Tel no      021 444 1044      \_\_\_\_\_  
Date      20-9-2019      \_\_\_\_\_

  
\_\_\_\_\_  
**District Manager**      Comment

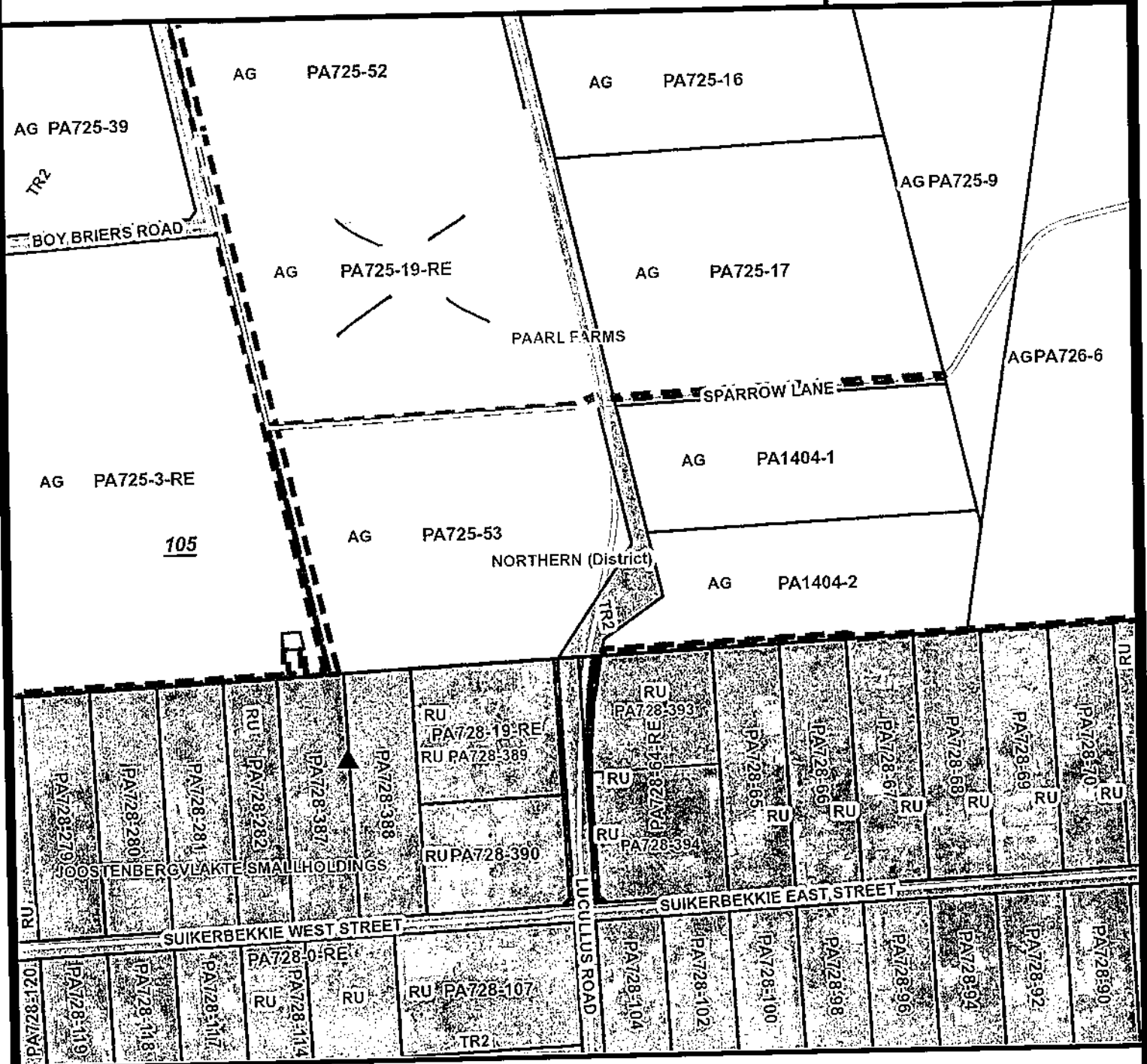
Name      Susanna Matthysen      \_\_\_\_\_  
Tel no      021 444 1061      \_\_\_\_\_  
Date      20/9/2019      \_\_\_\_\_



# PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP

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ANNEXURE :



## Overview

Erf:

Allotment:

Ward:

District:

Suburb:

Sub Council:



1:4 014

Notices Served



Support  
Received



Petition  
Signatory



Objections  
Received



Generated by:

Date: 19 September 2019

File Reference:



CITY OF CAPE TOWN  
ISIXEKO SASEKAPA  
STAD KAAPSTAD

Making progress possible. Together.







## **ANNEXURE C**

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## MOTIVATION

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### BACKGROUND:

- IT IS MY BELIEVE THAT NO CONTRAVENTION OF THE DMS WAS COMMITTED, AS THERE IS NOTHING THAT PREVENTS YOU FROM PUTTING DOWN CONTAINERS ON AN AGRICULTURAL PROPERTY AND TO STORE EQUIPMENT IN IT. SUCH A USE WOULD BE ENTIRELY NORMAL ON A FARM.
- AN APPLICATION FOR AN ADMINISTRATIVE PENALTY IS SUBMITTED WITH A UEN TO SAVE TIME AND TO CO-OPERATE WITH THE CITY.
- THE STORAGE IS OF A VERY LIMITED SCALE (CONTAINERS), LOCATED ON A VERY SMALL FOOTPRINT IN RELATION TO THE ENTIRE PROPERTY.
- NO ACTIVITIES OTHER THAN THE LIMITED STORAGE (TO THE EXTENT THAT IT CAN BE VIEWED AS AN ACTIVITY) WHICH CAN BE ASSOCIATED WITH A DRILLING OPERATION OCCURS ON THE FARM.
- NOBODY IS PREJUDICED OR INCONVENIENCED BY ~~BY~~ THE LAND USE
- IT SHOULD BE NOTED THAT AN APPLICATION FOR A LAND USE DEPARTURE WAS SUBMITTED IN ORDER TO ACCOMMODATE DRILLING EQUIPMENT ON THE PROPERTY (SEE SITE DEVELOPMENT PLAN)

CONSIDERING THE ABOVE, THERE IS NO JUSTIFICATION FOR AN ADMINISTRATIVE PENALTY OF ANY SIGNIFICANCE

### FACTORS TO BE CONSIDERED

(a) NATURE, DURATION, GRAVITY AND EXTENT OF THE CONTRAVENTION  
N/A

(b) CONDUCT OF THE PERSON INVOLVED IN THE CONTRAVENTION  
THE CONDUCT OF THE PERSON IS POSITIVE IN ORDER TO FINALISE THE APPLICATION FOR THE LAND USE DEPARTURE.

(c) WHETHER THE UNLAWFUL CONDUCT WAS STOPPED  
SEE BACKGROUND ABOVE

(d) WHETHER A PERSON INVOLVED IN THE CONTRAVENTION HAS PREVIOUSLY CONTRAVENTED THIS BY-LAW OR A PREVIOUS PLANNING BY-LAW

NONE

ADDITIONAL INFORMATION

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CASE ID 70434795 — FARM 725/19 JOOSTENBERG VLAKE

TITLE DEEDS : ATTACHED

COMPANY RESOLUTION : ATTACHED — ONLY DEREK WHITFIELD

NATURE : 4 CONTAINERS (6.0 X 2.9) — STORING DRILLING EQUIPMENT.

DURATION : AS FROM 1 MARCH 2018 — 11 MONTHS

GRAVITY : THE IMPACT OF THE CONTAINERS ARE "MINOR"

EXTENT : 4 CONTAINERS (6.0 X 2.9)

THE CONTAINERS ARE STILL ON THE PROPERTY. NO BUSINESS OPERATES ON THE PROPERTY,

THE ONLY FORM OF BUSINESS ARE THE 4 CONTAINERS WHICH ARE USED FOR STORAGE PURPOSES, FOR EXISTING AND PROPOSED STRUCTURES — SEE ATTACHED PLAN

NO BUILDING PLANS HAS BEEN APPROVED FOR THE CONTAINERS.

*for Header*  
18/2/2019