



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

669

REPORT TO MUNICIPAL PLANNING TRIBUNAL

ITEM NO **MPTSW26/06/19**

CASE ID	70459699
CASE OFFICER	P. Evard
CASE OFFICER PHONE NO	021 444 7726
DISTRICT	Southern
REPORT DATE	2019-05-31

WARD 64: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 150151 CAPE TOWN AT LAKESIDE, 15A BRYN ROAD

1 EXECUTIVE SUMMARY

Property description	Erf 150151 Cape Town at Lakeside
Property address	15A Bryn Road
Site extent	1100m ²
Current zoning	Single Residential Zone 1
Current land use	Vacant, with retaining walls
Overlay zone applicable	Boyes Drive Scenic Drive
Submission date	2019-05-28
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes. Unauthorised retaining walls on the north-eastern and south-western portions of the property.
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

2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

- 3.1 A land use application for departures relating to common boundary setbacks for a dwelling house and a retaining wall to be erected on the property was

submitted on 2018-09-11 for consideration. During the assessment process it was identified that the retaining wall, which encroaches into the 3m common boundary building lines, located on the north-eastern portion of the property, is existing and there is not record of any previous approval. An administrative penalty application was therefore required.

- 3.2 The above departure application has been advertised to surrounding property owners and 3 objections were received. The land use application will be submitted to the MPT for consideration once the administrative penalty process has been finalised.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The existing terraforce retaining wall on the north-eastern boundary and stone and gabion retaining wall on Boyes Drive were both constructed by the previous owner.
- The structures were in place when the current owner purchased the property.
- The wall was constructed 2 years ago.

5 ASSESSMENT OF APPLICATION

- 5.1 The unauthorised retaining wall on the north-eastern portion of the property is in contravention of Item 22(d) of the Development Management Scheme (DMS) as it is located within the 3m common boundary building lines. The retaining structures within the street building line applicable to Boyes Drive are below ground level and are included in the list of structures permitted within the street building lines.

- 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.

- 5.3 Using a rate of R2550.00 per linear metre as per the table of costs attached to the Standard Operating Procedure for Administrative Penalties, the value of the contravention of the MPBL can be calculated as follow:

$$R2550.00 \times \pm 15.72m = R\ 40\ 086.00$$

- 5.4 The maximum administrative penalty that can be imposed is 100% of R40086.00.

- 5.5 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 – The contravention relates to a retaining wall located within the 3m common boundary building lines.

Duration – The applicant has provided an affidavit stating that the wall was erected 2 years ago (see Annexure C).

Gravity - The gravity of the contravention could potentially be serious given the nature of the structure, the gradient of the property, and potential safety concerns.

Extent – Approximately 15.72m length of retaining wall (at ±2m in height) contravenes the MPBL. The retaining structures within the street building line applicable to Boyes Drive are below ground level and are included in the list of structured permitted within the street building lines.

b) The conduct of the person involved in the contravention

The applicant has provided an affidavit stating that the retaining walls on the property were constructed 2 years ago, by the previous owner. This can be verified as the current owner, as indicated on the title deed purchased the property in July 2017 (see Annexure D) and the retaining structure is clearly visible on the 2016 aerial photography.

c) Whether the unlawful conduct was stopped

The unlawful conduct has not been stopped.

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

- 5.6 In view of the abovementioned considerations, this Department recommends that an administrative penalty of R0 be charged.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The current owner bought the property with the unauthorised work already constructed.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R0 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Erf 150151 Cape Town at Lakeside, with regard to the unauthorised retaining wall as indicated on the plan drawn by Clampett & Associates Architectural Design with drawing numbers FR01, FR02, FR03 & FR04, all dated February 2018.

ANNEXURES

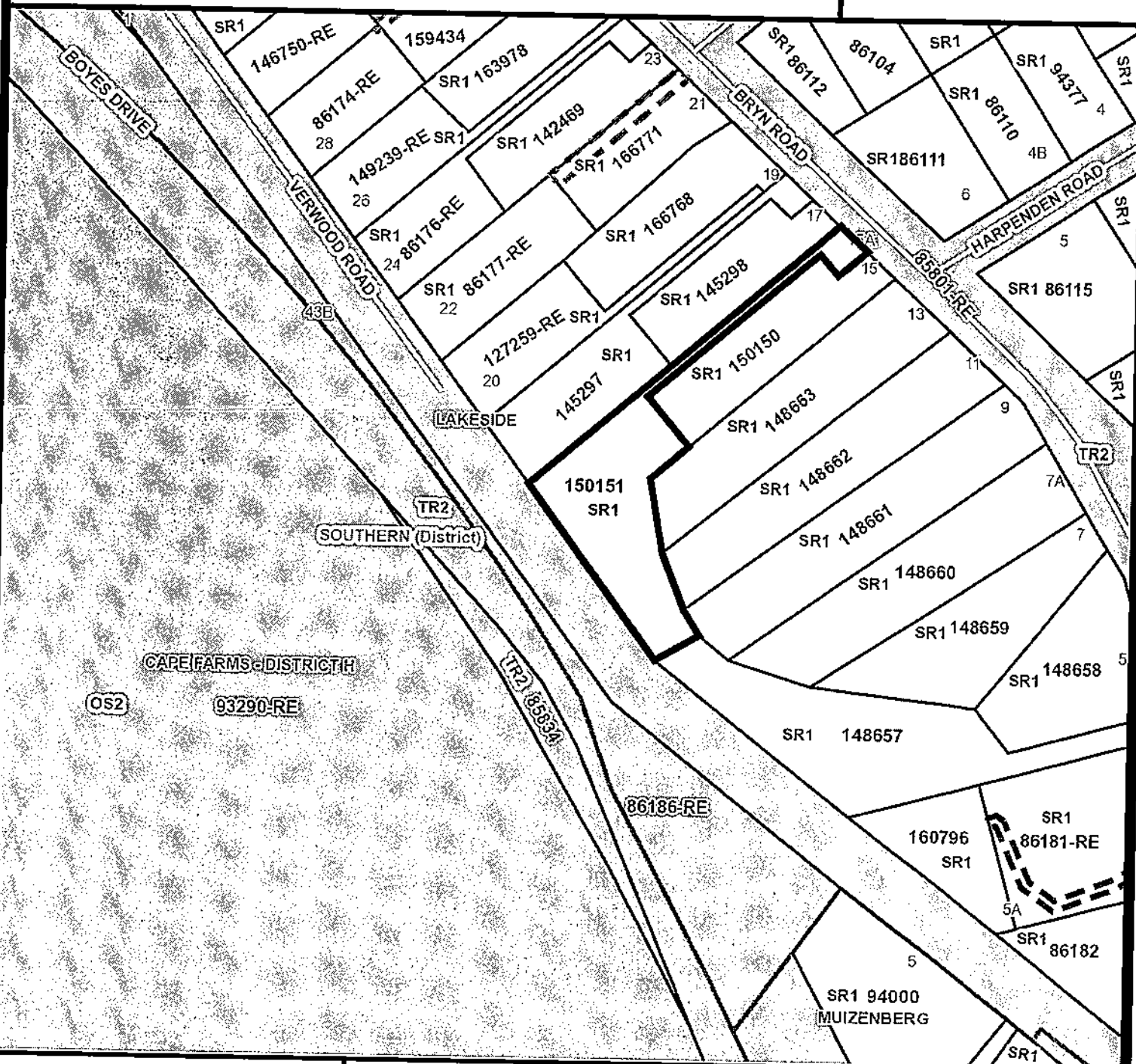
Annexure A	Locality plan
Annexure B	Site Development Plan
Annexure C	Motivation
Annexure D	Title deed



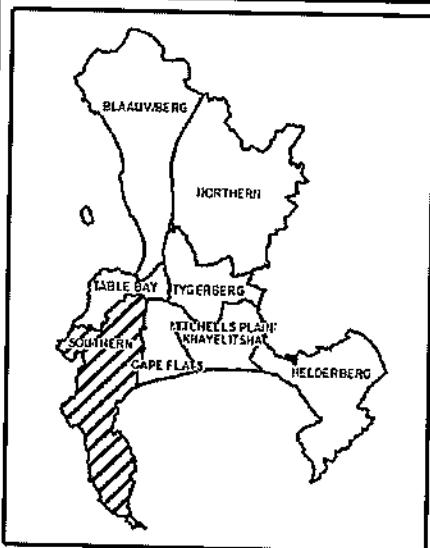
Section Head : Land Use ManagementName Pierre HoffaTel no 021 444 7724Date 2019-05-31Comment



District ManagerName Ossie GonsalvesTel no 021 444 7720Date 2019-05-31Comment



Overview



Erf: 150151

Allotment: CAPE TOWN

Ward: 64

District: SOUTHERN

Suburb: LAKESIDE

Sub Council: Subcouncil 19



1:1 203

Notices Served



Support Received



Petition Signatory



Objections Received



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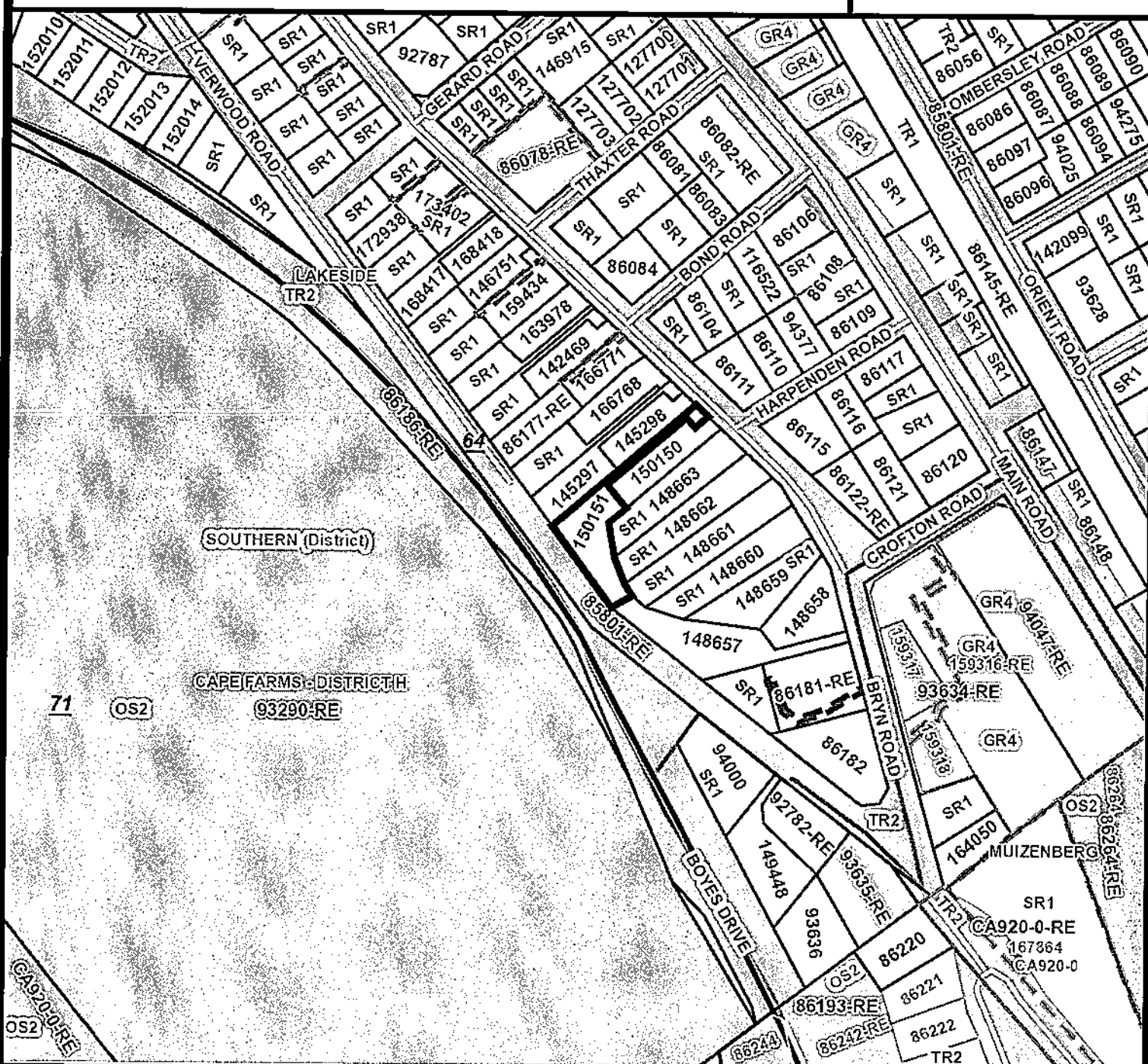
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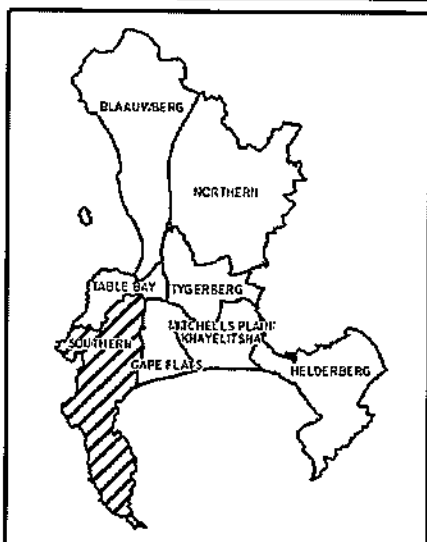


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Making progress possible. Together.



Overview



Erf: 150151

Allotment: CAPE TOWN

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Notices Served



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Petition
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Objections
Received



Generated by:

Date: 31 May 2019

File Reference:



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STAD KAAPSTAD

Making progress possible. Together.

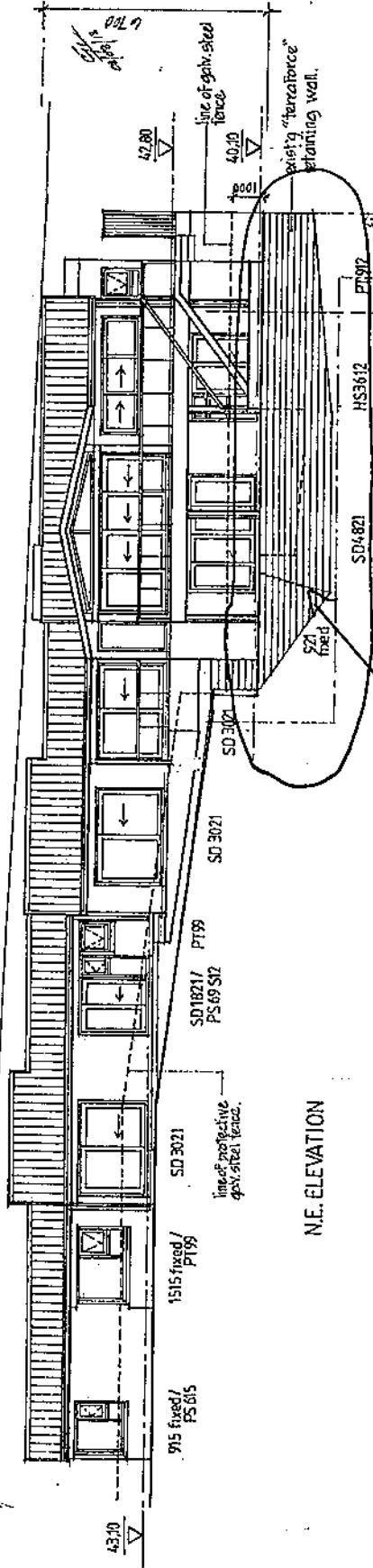
CONCISE SPECIFICATION

- FLOORS:**
Finish as per plan on min 25mm screed on 100mm conc. bed on p.v.c. DPM on min 50mm sand bed on compacted fill.
- SUSPENDED FLOORS:**
Finish as per plan on min 25mm screed on R.C. floor slabs to engineers design and detail.
- WALLS:**
250mm cavity brick external walls. All walls to be plastered and painted, undercoat and 2 coats PVA.
- WINDOWS:**
Double glazed u PVC windows and doors as noted on elevations as per mssrs 'Reluval' or o.a.
- CEILINGS:**
Crestone skimmed rhinoboard gypsum ceiling boards fixed to 50 x 50mm battens at max 400mm c/s. to underside of rafters for sloping ceilings and underside of the beams for flat ceilings. Crestone skimmed plaster to underside of reinforced concrete floor slabs.
- RAIN WATER GOODS:**
Seamless aluminum gutters fixed to 220 x 38mm timber fascias discharging to aluminum downpipes. Rainwater piped in 100mm diam. PVC pipe to water storage tank to specialist detail.
- ROOF:**
'Kliplock' o.e.a. gable, longspan corrugated steel roof sheets on 76 x 50mm purlins at max 1200mm c/s. on insulation (including 50mm on 220 x 38mm rafters at max. 1200mm c/s. Pitch 3° and 12° to sloping roofs.
- STRUCTURAL:**
All reinforced concrete columns, slabs, beams, stairs and retaining walls to Structural Engineers' design and detail.
- ROOF TERRACE:**
Finish as per plan on min. 50mm screed to fall on Bluthene o.e.a. DPM on R.C. slab.
- BALUSTRADES:**
50mm diam. stainless steel handrails supported on S.S. uprights to detail at 1.0m c/s. with S.S. tensioned steel cables at max. 100mm c/s.

PROPOSED DWELLING
ON ERF. 150151
BRYN RD. LAKESIDE
for
MR & MRS FRANKLIN

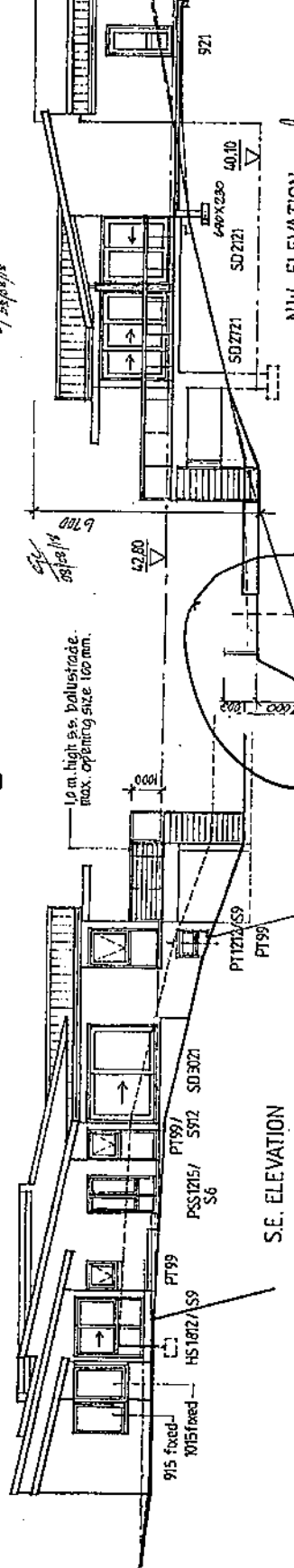
Stampell & Associates
Eng. T. Stampell B.A.S. (C) 1978
Architects 100/101
Riverside Drive
P.O. Box 134
Durban 401
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Line of Boyles Drive, D.O.P.



N.E. ELEVATION

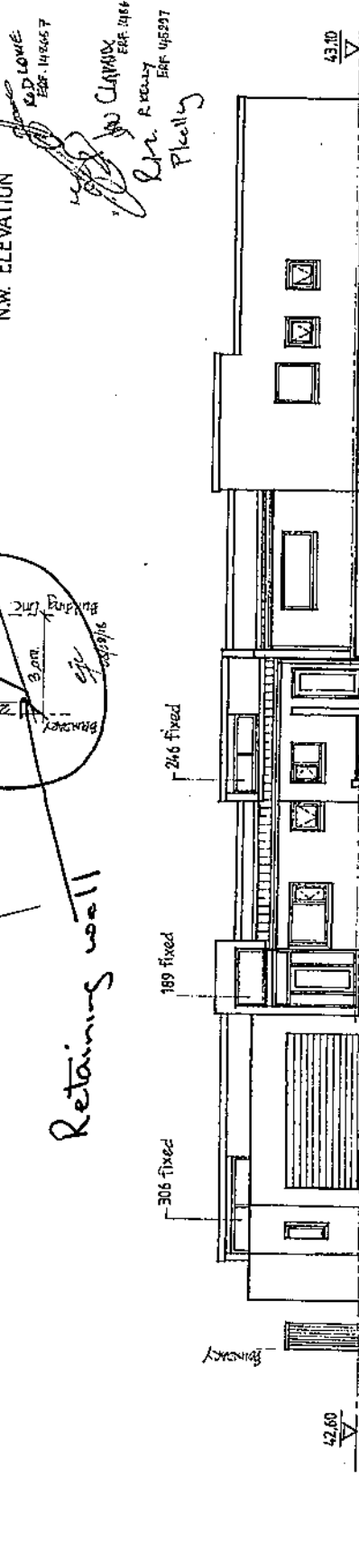
Retaining wall



S.E. ELEVATION

Retaining wall

N.W. ELEVATION



S.W. ELEVATION

- NOTES:
1. Windows in excess of 1.0m or less than 400mm above F.F.L. to be safety glazed in accordance with Part N of SANS 10400.
 2. NEW STEPS: max rise 10, 200mm, min tread 350mm.
 3. Openings up to 3.0m wide to have P.C. lintels over with min. 4 courses brickwork above. All openings wider than 3.0m to have R.C. beams to Structural Engineers' design.

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PROPOSED DWELLING
ON ERF. 150151
BRYN RD. LAKESIDE
for
MR & MRS FRANKLIN

Stumpell & Associates
Architects
P.O. Box 1000
1000 Cape Town
Tel: 021 734 8228
info@stumpell.co.za
www.stumpell.co.za

Handwritten notes and signatures, including 'C. D. LOWE', 'CLAWSON', 'R. K. R. R. R.', and 'Placely'.

AFFIDAVIT

679

I, the undersigned Marilyn Joy FranklinID-Number 5501050068089 Age 63Residing address 19 Croft Road, Constantia, 7806

Working address _____

Tel N/A (w) 021794259 (h) 0834604213 (cell)

Declare under oath in English that:

I am the current owner of erf 150151, Lakeside, and the existing terraforce retaining wall on the northeast boundary and the stone and gabion retaining wall on the Boyes Drive boundary were both constructed by the previous owner and were in place when I purchased the erf. The wall was constructed 2 years ago.

I am familiar with and understand the contents of this declaration. I have no objection to taking the prescribed oath. I consider the prescribed oath as binding to my conscience.

Place: COOK TOWNDate: 15/5/2019Time: 17:45Signature: [Signature]

It is hereby certified that the aforesaid declaration was signed and sworn in my presence on this the 15th day of MAY 2019, at OIEP RIVER, the deponent having confirmed and acknowledged that he/she knows and understands the contents of this declaration; that he/she has no objection to taking the prescribed oath; and that he/she considers the prescribed oath as binding on his conscience.

J. TOMAS
7092660-3 SGT

Commissioner of Oaths

(Details to be provided on physical and postal address e.g. stamp of police station)

Full names: JABULISHE TOMASRank/office held: SGTArea: OIEP RIVER S.A.P.SForce number: 7092660-3

SUID-AFRIKAANSE POLISIEDIENS
7092660-3
STASIEREVEUVOERDER
15 MAY 2019
STATION COMMANDER DIERP RIVER S.A.P.S
SOUTH AFRICAN POLICE SERVICE

11

STBB SMITH TABATA BUCHANAN BOYES
2nd Floor
5 High Street
Rosenpark
Tygervalley
7536
DOCEX 38 TYGERBERG

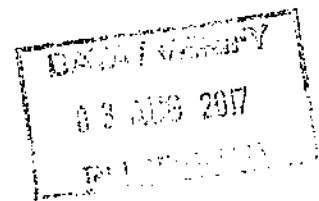
680

Prepared by me,

CONVEYANCER
HANLIE FERREIRA

HENDRIK JOHANNES MOUTON

Fees and disbursements		Office fee
	Amount	
Purchase price 50% of R. 1 850 000,00		1050,00
Mortgage commission		
Transfer fee		
Stamp duty		
Other disbursements		
Total		



T 000043625 / 2017

DEED OF TRANSFER

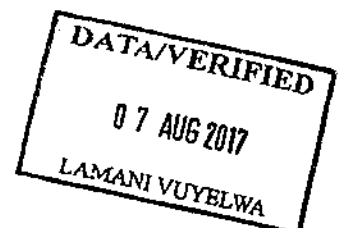
BE IT HEREBY MADE KNOWN THAT

LISA MACE

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, he/she, the said
Appearer, being duly authorised thereto by a Power of Attorney granted to him/her by

STEPHEN BERRY
Identity Number 540517 5007 08 3
Married out of community of property

signed at BELLVILLE dated 19 April 2017.



AND the said Appearer declared that his/her principal had on 27 March 2017 truly and legally sold and that he/she, the said Appearer in his/her capacity aforesaid, did, by these presents cede and transfer to and on behalf of:

MARILYN JOY FRANKLIN
Identity Number 560105 0068 08 9
Married out of community of property

her heirs, executors, administrators or assigns in full and free property:

ERF 150151 CAPE TOWN
IN THE CITY OF CAPE TOWN
CAPE DIVISION
PROVINCE OF THE WESTERN CAPE

IN EXTENT: 1100 (ONE THOUSAND ONE HUNDRED) SQUARE METRES

FIRST TRANSFERRED by Deed of Transfer Number T74538/1992 with Diagram Number SG3593/1992 relating thereto **AND HELD** by Deed of Transfer Number T30432/2007.

- A. **SUBJECT** to the conditions referred to in Certificate of Amended Title (Cape Freeholds Volume 28 Number5) and to the following condition contained therein:

"The said land being subject moreover to all such duties and regulations as either are already or shall in future be established respecting lands held under similar tenure."

- B. **ENTITLED** to the benefit of a Servitude Right of Way Number K384/2015 referred to in the Endorsement dated 31 March 2015 on Deed of Transfer No. T30432/2007, which reads as follows:

"The within mentioned property is entitled to a right of way over Erf 145297 Cape Town measuring 727 square metres held by Deed of Transfer Number T51169/2014 which servitude area is of uniform width and runs parallel along the entire length of the surveyed line AH on registered Diagram Number 334/1990. As will more fully appear from the said Notarial Deed."

WHEREFORE the Appearer, renouncing all the right and title which the said

STEPHEN BERRY, married out of community of property

heretofore had to the premises, did, in consequence also acknowledge him, to be entirely dispossessed of, and disentitled to, the same; and that, by virtue of these presents, the said

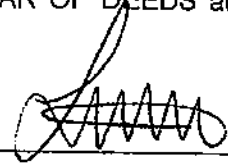
MARILYN JOY FRANKLIN, Married out of community of property,

her heirs, executors, administrators or assigns

now is and henceforth shall be entitled thereto, conformably to local custom, the State, however, reserving its rights, and finally acknowledging the purchase price of the property hereby transferred to be the sum of **R1 850 000.00 (ONE MILLION EIGHT HUNDRED AND FIFTY THOUSAND RAND).**

IN WITNESS WHEREOF I, the said Registrar of Deeds together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 28 July 2017



q.q.

In my presence:



Registrar of Deeds

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