



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

CASE ID	70411574
CASE OFFICER	Y.Hugo
CASE OFFICER PHONE NO	021 684 4349
DISTRICT	Cape Flats
REPORT DATE	20/02/2019

ITEM NO **MPTSW51/023/19**

**WARD 49: APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): ERF 171262, CAPE TOWN, 35 FENNEL CRESCENT KEWTOWN.**

**1 EXECUTIVE SUMMARY**

Property description	Erf 171262, Cape Town
Property address	35 Fennel Crescent, Kewtown
Site extent	103m <sup>2</sup>
Current zoning	Single Residential 1: Conventional housing (SR1)
Current land use	Dwelling house.
Overlay zone applicable	None.

Submission date	05/12/2018
Subject to PHRA / SAHRA	No.
Any unauthorised land use / building work?	Yes-unauthorised veranda and covered stoep.
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	No.

demolition directive i.t.o section 128 of the MPBL? If yes, an administrative penalty may not be applied for.	542
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 171262, Cape Town is zoned Single Residential 1 (SR1) and unauthorised building work exists in the form of a verandah (rear) and a covered stoep along the street boundary.
- Portions of the unauthorised work is in controvention 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 he built the covered stoep and verandah to protect their doors and windows against the heavy rain and weather conditions as their house is very damp and wet.
- The homeowner states that he was unaware that he needed a plan for those projects.
- The homeowner states that he only became aware that he needed plans when he wanted to erect a carport and got advised that he needed a plan for the covered stoep and verandah.
- The homeowner concludes by stating that he is sure that the covered stoep and verandah will in no way have a negative impact, and will not be a hinderance to the surrounding neighbours.

## 5 ASSESSMENT OF APPLICATION : 543

- 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:

##### Covered Stoep

Value per m <sup>2</sup>	=	R 1 340
Total unlawful area (verandah)	=	1m <sup>2</sup>
Calculated value (value x area)	=	R1 340

##### Verandah

Value per m <sup>2</sup>	=	R 1 020
Total unlawful area (verandah)	=	5.88m <sup>2</sup>
Calculated value (value x area)	=	R5 998

<b>Total value</b>	=	<b>R7 338</b>
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An amount which is not more than 100% of **R7 338** 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 3m rear common boundary building line and a portion of the covered stoep contravenes the 1m street building line.

Duration –Aerial photography indicates that the covered stoep and verandah was erected approximately in 2012 which is 6 to 7 years ago. The duration of the unauthorised building work is considered to be long.

Gravity – It is unlikely that the unauthorised structures 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 6.88m<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 verandah and carport 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 **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 in that the structures pose no threat on health or safety of the surrounding property owner and the structures are relatively minor in extent.
- 6.3 The owner of the property has not previously contravened this By-law or any other planning law.
- 6.4 The structure has existed for a long period before an application was submitted.

**7 RECOMMENDATION**

1545

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 171262, Cape Town with regard to the unauthorised building work.

**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 Management**

Comment

Name A McCannTel no 021 6844341Date 1 March 2019

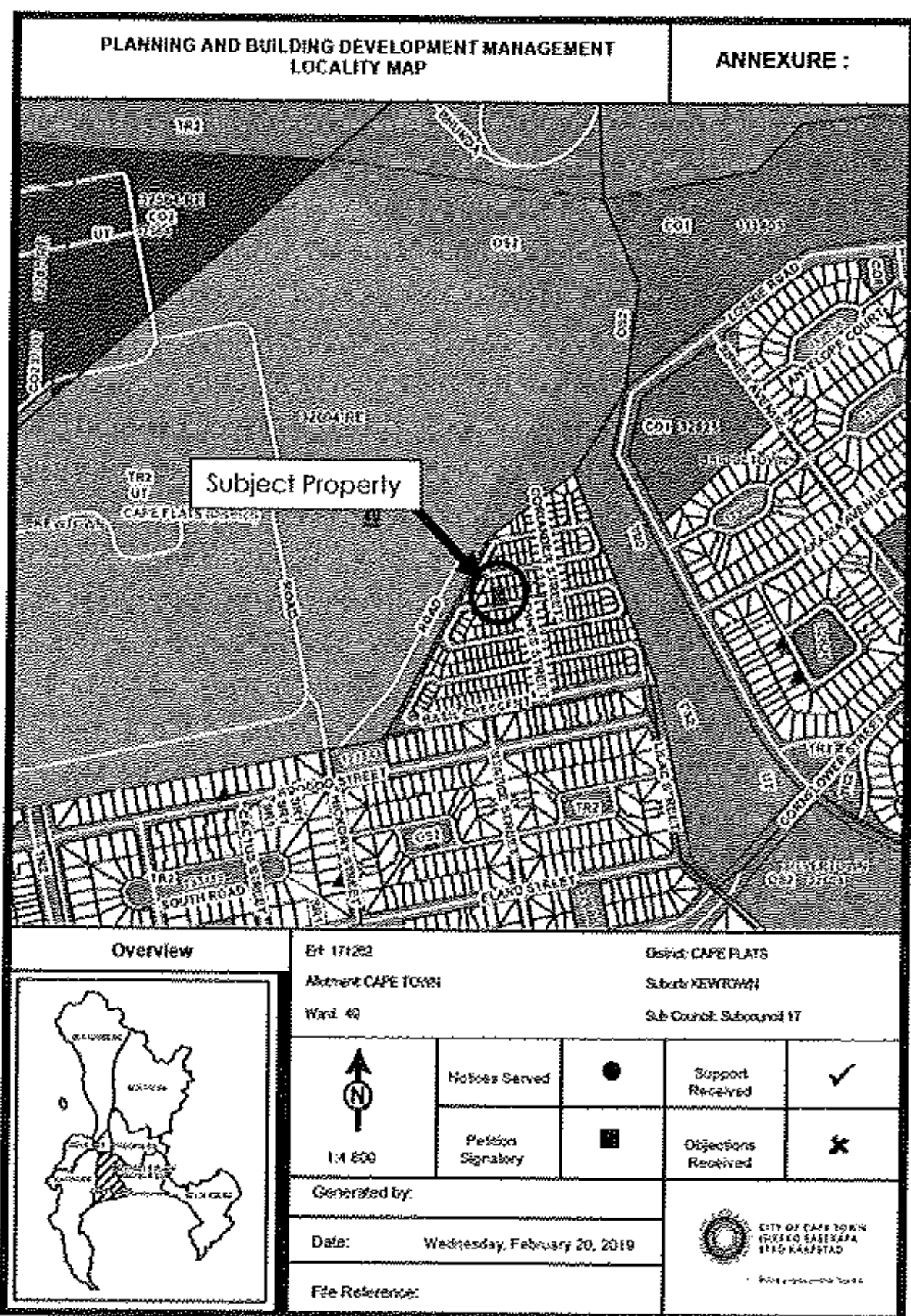
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**District Manager**

Comment

Name Chad NewmanTel no 021 684 4310Date 04 March 2019

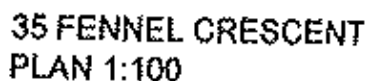
## ANNEXURE A: LOCALITY PLAN – METRO CONTEXT



## ANNEXURE A-1: LOCALITY PLAN – LOCAL CONTEXT

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :	
<b>Overview</b> 		Ert 171252 Attachment CAPE TOWN Ward 49 District CAPE FLATS Suburb KEW TOWN Sub Council: Subcouncil 17	
		Notices Served <input checked="" type="checkbox"/>	Support Received <input checked="" type="checkbox"/>
1:150 Person Signatory <input checked="" type="checkbox"/>		Objections Received <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Generated by:			
Date: Tuesday, February 19, 2019		CITY OF CAPE TOWN IN-LEAD TALENTS 171252	
File Reference:		171252	

## 1548





ANNEXURE C: MOTIVATION

549

MOTIVATION – ERF 171262 STATICE HEIGHTS, KEWTOWN

City of Cape Town

Dear Sir / Madam

We herewith wish to apply for the relaxation of the building regulations at no 35 Fennel Crescent, Kewtown.

I have built the Covered Stoep and the Verandah, to protect our doors and windows against the heavy rain and weather conditions because our house is very damp and wet.

We were unaware that we needed a plan for these projects. Now that we want to erect the carport, we were advised that we should have plans for the Covered Stoep and Verandah also.

We are sure that this project will in no way have a negative impact, and will not be a hinderance to the surrounding neighbourhood.

We trust that this application will receive your favourable attention and approval.

Many thanks & kind regards

Roderick and Cecelia George

