



REPORT TO MUNICIPAL PLANNING TRIBUNAL

ITEM NO **MPTSW41/05/19**

CASE NO	70442091
CASE OFFICER	Y Joffe
CASE OFFICER PHONE NO	021 444 9536
DISTRICT	Southern
REPORT DATE	30 April 2019

WARD 62: APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL): REMAINDER ERF 2748 CONSTANTIA, 74 KLEIN CONSTANTIA ROAD

1 EXECUTIVE SUMMARY

Property description	Remainder Erf 2748 Constantia
Property address	74 Klein Constantia Road
Site extent	4 351m²
Current zoning	Single Residential Zone 1
Current land use	2 dwelling houses, domestic staff quarters, outbuilding and a swimming pool
Overlay zone applicable	Constantia - Tokai Local Area Overlay Zone
Submission date	28 January 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	A dwelling house, domestic staff quarters, dwelling house extension (verandah) and garage were erected without approval.
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.e. 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 An application for consent (for raising of ground) and departures (relating to setbacks) to permit a dwelling house, second dwelling and domestic staff quarters was submitted on 29 March 2018. The application was closed due to the applicant's failure to submit requested outstanding information timeously.

- 3.2 A similar application was submitted on 29 August 2018. The application was circulated to the provincial Department of Transport and Public Works due to a title deed condition imposed in terms of Act 21 of 1940 relating to the status of Klein Constantia Road. After the additional information process, it was discovered that the proposed structures had already been constructed. The applicant was then instructed to submit an administrative penalty application. This was not submitted timeously and the application subsequently withdrawn.
- 3.3 Two building plan applications were submitted in 2017, both plans were not cleared. This led to the subject application. An application for departures is yet to be submitted.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The second dwelling and domestic quarters had already been erected by the time the current owner bought the property.
- The garage is concealed behind the boundary wall and verge trees.
- The second dwelling is a single storey structure concealed from the western neighbouring property by the boundary wall.
- The raising of ground between the garage and second dwelling is not visible.
- The work done on such structures by the existing owner are cosmetic in nature (not requiring approval).
- The conduct of the person involved in the contravention is unclear.
- The unlawful conduct was not stopped.
- The current owner had no intention of concealing the unauthorised work.
- The current owner has not previously contravened this By-Law or any other planning laws.

5 ASSESSMENT OF APPLICATION

- 5.1 The unauthorised building work which comprises of a dwelling house, domestic quarters, dwelling house extensions (verandah) and garage are in contravention of Item 22(d) (relating to street and common boundary setbacks) and Item 126 (relating to the raising of ground) of the Development Management Scheme.
- 5.2 Note that although the building work contravenes Condition B.4 of title deed T20602/2009 relating to the setback from the centerline of Klein Constantia Road, as this condition was imposed in terms of Act 21 of 1940, the building work is not in contravention of the MPBL.
- 5.3 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.
- 5.4 For pragmatic reasons, only the value of the building work relating to the verandah that was carried out by the current owner will be calculated. Using the value of building work in the Standard Operating Procedure for Administrative Penalties a rate of R1020.00 per m² is applicable to the verandah. The maximum administrative penalty is:

R1020 x 12.3m² = R12 546.00

- 5.5 The total amount which is not more than 100% of R12 546.00 may be imposed as an administrative penalty.
- 5.6 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 unauthorised building work relates to a dwelling house, domestic quarters and garage which are permitted as of right in Single Residential Zone 1.

Duration – According to the applicant, the contravention had been in existence by the time the current owner purchased the property in 2009. This has been verified on the City's aerial viewer which shows the buildings have existed before 2009. However, additions to the northern part of the main dwelling were made to the dwelling between 2012 and 2013. The contravention has existed for longer than 10 years which is a long duration. And the most recent additions have existed for 16 years which is a long duration.

Gravity – The gravity of the contravention is large considering that the unauthorised building work relates to a large dwelling house and ancillary outbuildings. The impact on the neighbour to the west, which is the most affected, is mitigated by the fact that the property is well treed on the western common boundary and the buildings on the neighbouring property to the west are set far back from the common boundary.

Extent – The unauthorised building work measures up 1346m² and the contravention measure 107m². This extent is large.

b) The conduct of the person involved in the contravention

According to the affidavit submitted by the owner (see Annexure E) at the request of this Department, the unauthorised building work was constructed by the previous owner. This has been to an extent verified on the City's aerial viewer. However, a verandah which contravenes the western common boundary building line was erected by the current owner and this has been concealed under "cosmetic work" which was according to the applicant "replacing of damaged windows, roof sheets, ceilings and general maintenance". This explanation is not accepted.

Furthermore, the application form for departures and consent relating to the August 2018 for approval that was submitted by the architect and signed by the owner, states that there was no illegal building work on the property and that the purpose of the application was not to rectify a contravention of the MPBL. This is patently incorrect. In this regard, the applicant therefore made misrepresentations to the Council.

In this regard it must be noted that Section 78 of the MPBL states that:

- (1) An applicant must ensure that –
 - (a) no misrepresentation is made to the City;
 - (b) the City is not misled;
 - (c) all information furnished to the City is accurate; and
 - (d) the application does not omit any relevant information.
- (2) A person who contravenes subsections (1)(a) or (1)(b) is guilty an offence and upon conviction is liable to the penalties contemplated in sections 133(2) and 133(3).

The conduct of both the applicant and the current owner cannot be condoned.

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 has not previously contravened the By-Law or any other planning law.

- 5.7 In view of the abovementioned considerations, and particularly the conduct of the current owner and applicant who made misrepresentations to Council, a R5000.00 administrative penalty is recommended for the verandah. A R0 administrative penalty is recommended for the building work done by the previous owner (i.e. dwelling house, staff quarters and garage).

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The unauthorised building work is in contravention of Items 22(d) and 126 of the Development Management Scheme.
- 6.2 The contravention relates to building work that is permitted as of right in Single Residential Zone 1.
- 6.3 The gravity of the contravention is significant.
- 6.4 The duration of the contravention has been long.
- 6.5 The extent of the contravention is large.
- 6.6 Although the current owner bought the property with majority of the unauthorised buildings already existing, the current owner did further unauthorised building work that contravened the Municipal Planning By-Law.
- 6.7 The applicant and the current owner withheld key information from Council when submitting the departure and administrative penalty applications. As a result, they misled the City, made a misrepresentation to the City and omitted relevant information, which is an offence in terms of Section 78 of the MPBL. The conduct of the owner cannot be condoned.
- 6.8 As far as can be ascertained, the current owner has not contravened the 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 R5000.00 for the verandah and R0 for the dwelling house, garage and domestic staff quarters be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Remainder Erf 2748 Constantia, as per the plan LUM/16/2748.

ANNEXURES

3021

Annexure A Locality Plan
Annexure B Site development plan
Annexure C Applicant's motivation
Annexure D Title deed
Annexure E Affidavit



Section Head : Land Use Management

Comment

Name P Hoffa

Tel no 021 444 7724

Date 2019-04-30



District Manager

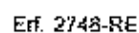
Name U Gonsalves

Tel no 021 444 7720

Date 2019-04-30

Comment

ANNEXURE : A



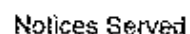
Alignment: CONSTANTIA

Word: 62

District: SOUTHERN

Suburb: CONSTANTIA

Sub-Council: Subcouncil 20

Support
Received

1:3 566

Petitioner
Signatory



Objections Received



Generated by:

Date: Thursday, 25 April 2019

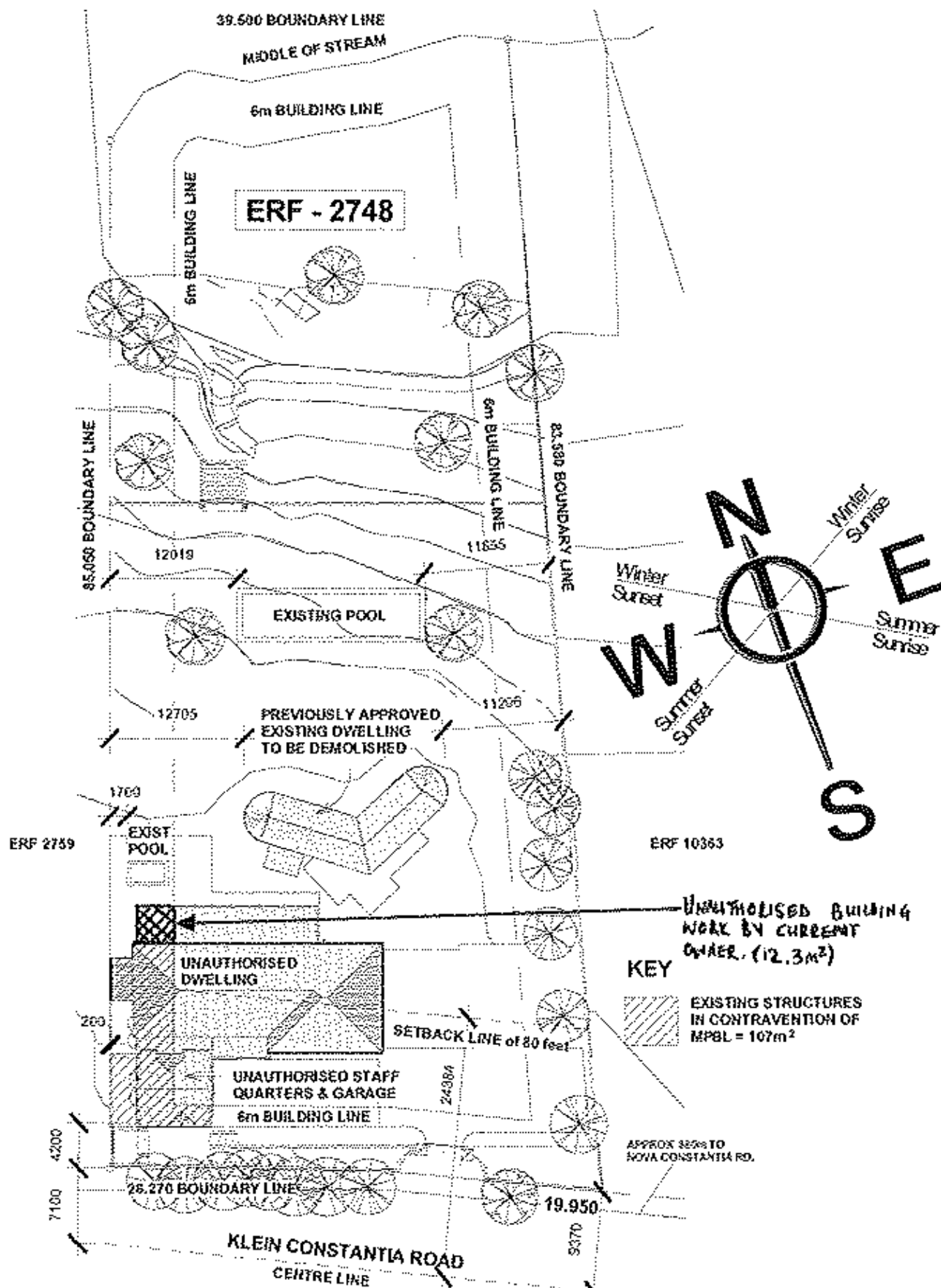
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CITY OF CAPE TOWN
ISIXEKO SASEKAPA
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740,523,221,440,000 7/5-7/22

3023



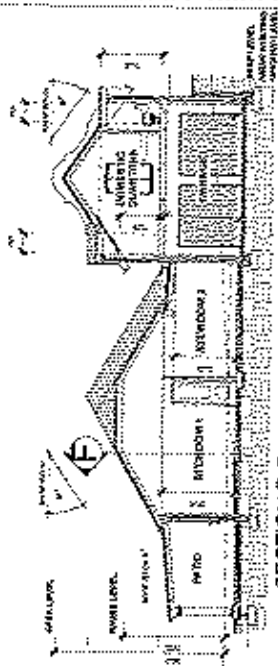
SITE PLAN SHOWING POSITION OF EXISTING STRUCTURES

SCALE 1 TO 50 mm A4

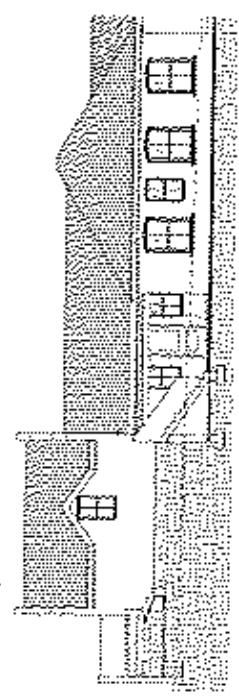
LUM/16/2748

NOTES

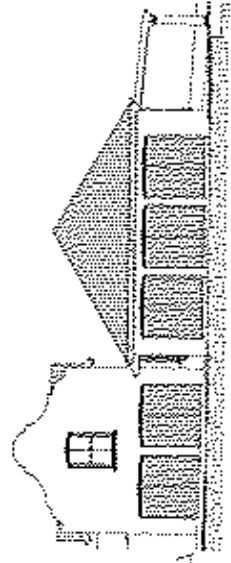
1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. FINISH FLOOR LEVELS ARE INDICATED BY ELEVATION.
3. ROOF PITCHES ARE INDICATED BY THE RATIO OF VERTICAL TO HORIZONTAL.
4. FOUNDATION WALLS ARE TO BE CONCRETE.
5. ROOFING IS TO BE ASPH/FLT SHINGLES.
6. EXTERIOR WALLS ARE TO BE BRICK OR CONCRETE BLOCK.
7. INTERIOR WALLS ARE TO BE GYP/PLA.
8. FLOORS ARE TO BE 4" CONC. ON 12" JOISTS.
9. CEILING IS TO BE 9" GYP BOARD.
10. DOORS ARE TO BE 6'0" X 2'0" SLIP DOORS.
11. WINDOWS ARE TO BE 6'0" X 4'0" DOUBLE HUNG.
12. KITCHEN APPLIANCES ARE TO BE INSTALLED AS SHOWN.
13. BATH FIXTURES ARE TO BE INSTALLED AS SHOWN.
14. LIGHT FIXTURES ARE TO BE INSTALLED AS SHOWN.
15. ALL ELECTRICAL WORK IS TO BE DONE BY A LICENSED ELECTRICIAN.
16. ALL PLUMBING WORK IS TO BE DONE BY A LICENSED PLUMBER.
17. ALL MECHANICAL WORK IS TO BE DONE BY A LICENSED MECHANIC.
18. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES.
19. ALL MATERIALS ARE TO BE OF THE BEST QUALITY AVAILABLE.
20. ALL WORK IS TO BE DONE IN ACCORDANCE WITH THE ARCHITECT'S INTENT.



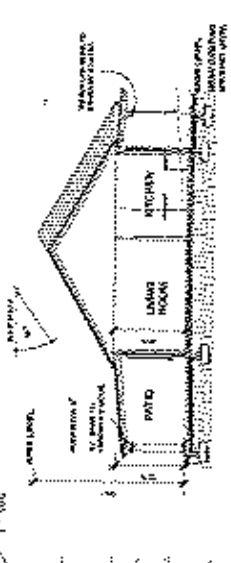
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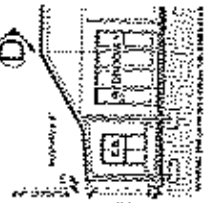
SOUTH ELEVATION
1/100



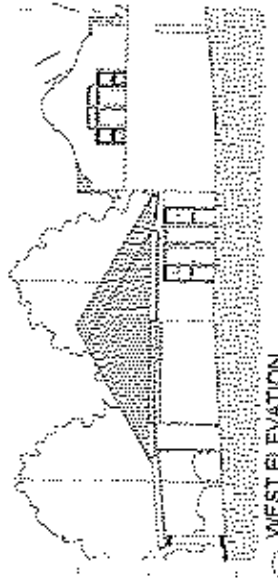
EAST ELEVATION
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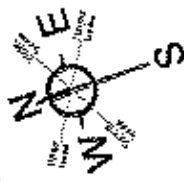
SECTION E-E
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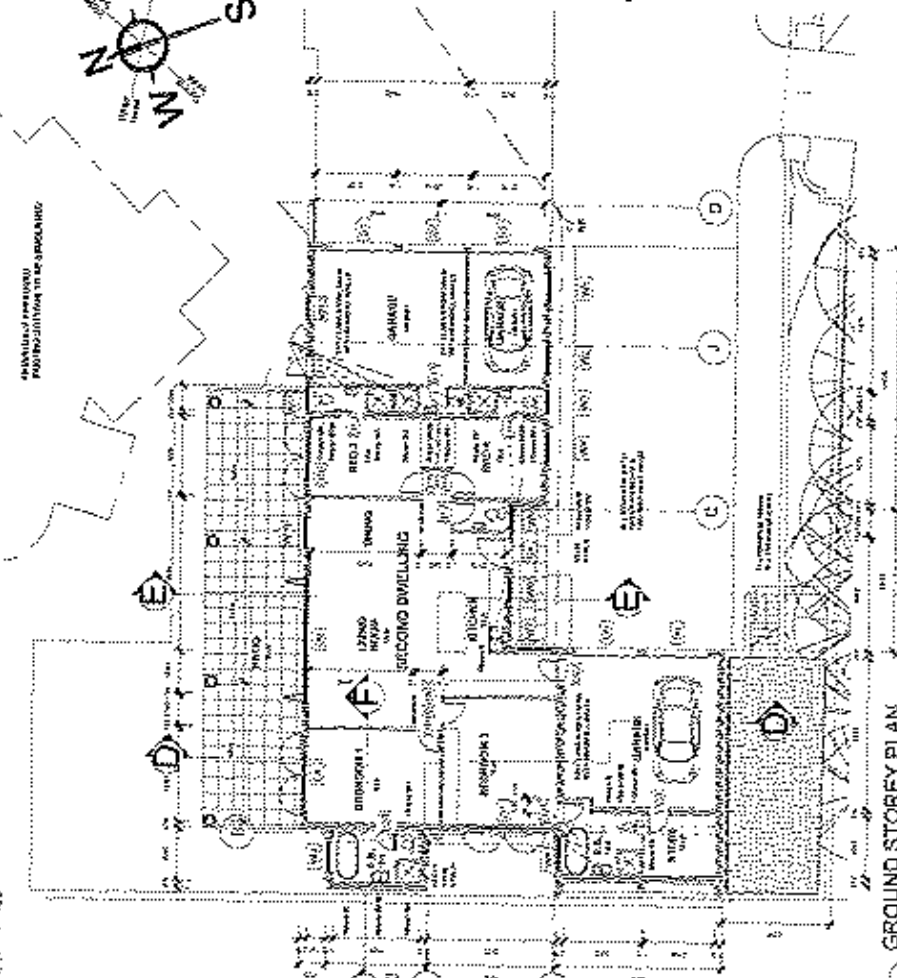
SECTION F-F
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WEST ELEVATION
1/100



FIRST STOREY PLAN
1/100



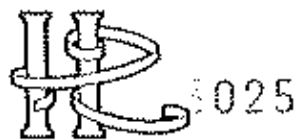
GROUND STOREY PLAN
1/100

3024

HOUSE COLOURS	
INTERIOR FINISHES	
PLASTER ELEVATIONS	
SECTION ELEVATIONS	
SECTION F-F	
SECTION G-G	
SECTION H-H	
SECTION I-I	
SECTION J-J	
SECTION K-K	
SECTION L-L	
SECTION M-M	
SECTION N-N	
SECTION O-O	
SECTION P-P	
SECTION Q-Q	
SECTION R-R	
SECTION S-S	
SECTION T-T	
SECTION U-U	
SECTION V-V	
SECTION W-W	
SECTION X-X	
SECTION Y-Y	
SECTION Z-Z	

SITE PLAN
1/100

SITE PLAN
1/100



**RAUBENHEIMER HERVEY
& ASSOCIATES c.c.**
Architecture & Interior Design since 1996

MOTIVATION FOR DEPARTURES & APPLICATION FOR AN ADMINISTRATIVE PENALTY

HOUSE COUVES – ERF 2748 CONSTANTIA

- The structures indicated on the submission plan as the Second Dwelling and Domestic Quarters were all in existence at time of purchase by the owner, as is evident in historical aerial photographs in the council records. Work done on these existing structures by the owner has been limited to that of a cosmetic nature, not requiring planning permission.
- The conduct of the person involved in the contravention is unclear.
- The unlawful conduct was not stopped or prevented by council. The unlawful building activities referred to herein were undertaken by an unknown previous owner of the said property.
- The current owner had no intention of concealing this from the authorities and no notice has been served by the said authorities. The owner has not previously contravened the applicable By-Law or any other planning law.

As stipulated by council, all buildings without previously approved plans have been indicated as new structures, for the purposes of this submission.

1. Item 22 (f)(iii) To permit domestic quarters to be 4.2m in lieu of 5.0m on the street boundary (Klein Constantia Road).

The domestic quarters (and garage below), was an existing structure when the owner purchased the property. The structure is well settled behind the boundary wall and verge trees with the aesthetic treatment very much in keeping with the historical vernacular of the area.

2. Item 22 (d) To permit a second dwelling to be 0.2m in lieu of 6.0m on the western common boundary.

The second dwelling was an existing structure when the owner purchased the property. The structure is of single storey construction which is completely concealed from the neighbouring property by the western boundary wall.

3. Item 22 (d) To permit a main dwelling to be 4.4m in lieu of 6.0m on the eastern common boundary.

The main dwelling is proposed to be set well back from the Klein Constantia Road on a lower portion of the property so as not to impose on the street scape in any way.

The structure will be concealed from the neighbouring property by a line of large ficus trees. The affected neighbour was consulted prior to the design stage in order to ensure his approval.

4. Item 22 (f)(iii) To permit a garage to be 4.2m in lieu of 5.0m on the street boundary (Klein Constantia Road).

The garage (and domestic quarters above), was an existing structure when the owner purchased the property. The structure is well settled behind the boundary wall and verge trees with the aesthetic treatment very much in keeping with the historical vernacular of the area.

5. Item 126 (a) To permit the raising of the existing ground level to 1,968m in lieu of 1.5m permitted.

The raised ground level (adjoining the garage and domestic quarters), was an existing level when the owner purchased the property. The filled area is well concealed behind the existing boundary wall and verge trees and has no impact on the adjoining neighbour's privacy.

NOTE:

The Owner's intended meaning of the term "Cosmetic nature" referred to in affidavit constitutes alterations and remedial work done to the existing structures that do not require council approval such as replacing of damaged windows, roof sheets, ceilings and general maintenance such as repainting.

53

53 Fairbridges
Ground Floor, Seardel House
Alphen Park
Constantia Main Road
CONSTANTIA
7806

3027

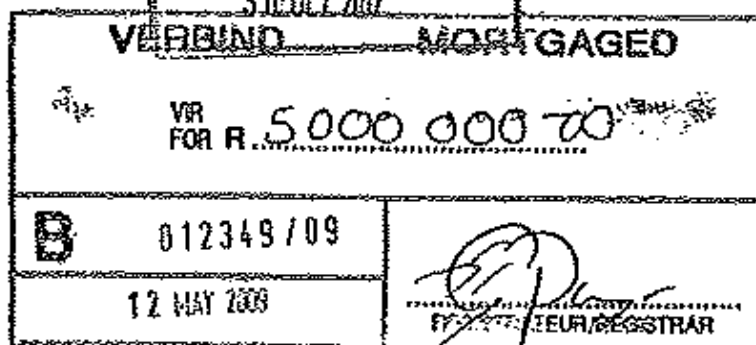
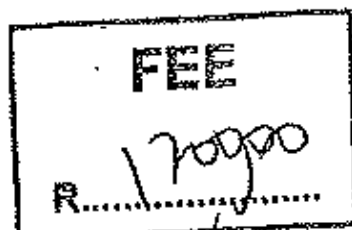
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ANNEXURE D

Prepared by me



CONVEYANCER
AIRD SA



DEED OF TRANSFER

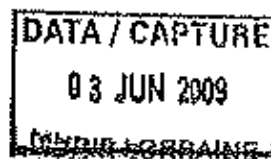
BE IT HEREBY MADE KNOWN THAT

SUSAN ANNE AIRD

T 020602/09

appeared before me, REGISTRAR OF DEEDS at Cape Town, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed at CAPE TOWN on 8 APRIL 2009 granted to him by

The Trustees for the time being of THE WILLOW WATERS TRUST
No. IT 354/1995



GhostConvey 10.2.4.9

VIR ENDOSSEMENTE KYK BLADSY
FOR ENDORSEMENTS SEE PAGE

And the appearer declared that his said principal had, on 15 October 2008, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

STEPHEN CHARLES COUVES

Identity Number 660531 5221 085

Married out of community of property

his Heirs, Executors, Administrators or Assigns, in full and free property

REMAINDER ERF 2748 CONSTANTIA

**SITUATE IN THE CITY OF CAPE TOWN, CAPE DIVISION, PROVINCE
WESTERN CAPE**

**IN EXTENT 4351 (FOUR THOUSAND THREE HUNDRED AND FIFTY ONE)
SQUARE METRES**

FIRST TRANSFERRED by Deed of Transfer No. T 3584/1949 with Diagram SG No.7795/1990 relating thereto and held by Deed of Transfer No. T24132/1996

- A. **SUBJECT** to the conditions referred to in Deed of Transfer No.7458 dated 9th November, 1896.
- B. **SUBJECT FURTHER** to the following special conditions contained in Deed of Transfer No.3584 dated 4th March 1949, and imposed by the Divisional Council of the Cape in terms of Section 11 of Act No.21 of 1940, namely:-
1. The land may not be subdivided without the written approval of the Controlling Authority as defined in Act No.21 of 1940.
 2. Not more than one building for use as a residence, together with such outbuildings required in connection therewith as the Controlling Authority may specifically approve which outbuildings may include quarters for domestic staff and/or such buildings as may be needed in connection with bona fide farming operations, shall be erected without the prior consent of the controlling authority.



3. The land shall be used for residential and agricultural purposes and no store or place of business or industry whatsoever may be opened or conducted on the land without the written approval of the Controlling Authority as defined in Act 21 of 1940.
4. No building or structure whatsoever shall be erected within distance of 80 cape feet from the centre line of the Klein Constantia Road without the written approval of the Controlling Authority as defined in Act 21 of 1940

C. **AND FURTHER SUBJECT** to the following conditions contained in said Deed of Transfer No.3584 dated 4th March 1949, imposed by the said M.G. Ashworth under said Deed of Transfer No.3584/1949 in her favour as the registered owner of the remaining extent of the property held under Deed of Transfer No.11282 dated 26th September, 1942, namely:-

5. No more than one residence shall be erected on any one plot and the value of such erection shall not be less than £3,000.0.0
6. The plot shall be used for residential purposes only.

7.

D. **AND FURTHER SUBJECT** to the terms of a servitude referred to in an endorsement dated 2nd December, 1953, made on said Deed of Transfer No.7889 dated 26th May, 1952, which endorsement reads as follows:-

"By Not. Deed No.718 dd. 12.11.53 the owner of the property held hereunder has granted to the Divisional Council of the Cape the right to construct a paved stormwater channel anywhere within 5ft. of the Eastern boundary of this ppty, marked c.b.b.1 on diag No.6188/48 annexed to T3584/49 with certain ancillary rights and subject to conditions as will more fully appear on reference to the said Not. Deed. A copy is hereto annexed."

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

The Trustees for the time being of THE WILLOW WATERS TRUST
No. IT 354/1996

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

STEPHEN CHARLES COUVES, Married as aforesaid

his 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 to be the sum of R12 500 000,00 (TWELVE MILLION FIVE HUNDRED THOUSAND RAND).

IN WITNESS WHEREOF, I the said Registrar, 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 12 May 2009


q.q.

In my presence

REGISTRAR OF DEEDS

3031

W.O.R

VERBIND		MORTGAGED	
FOR R 12 000 000.00			
B000030336 / 2012			
30 OCT 2012			
		REGISTRAR/REGISTRAR	

74 Klein Constantia Rd

3032

Constantia

7806

2nd April 19

RE: Erf 2748 Constantia

All structures indicated as 'existing' on the council submitted drawings (No. 16/122-01; 16/122-02; 16/122-03), were in existence at the time of the purchase of the property.

No changes have been made to these structures other than those of a cosmetic nature.

Kind regards,



Stephen Charles Couves

ID: 6605315221085

