



REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70520831
CASE OFFICER	A. ESAU
CASE OFFICER PHONE NO	021 360 3226
DISTRICT	KHAYELITSHA/MITCHELLS PLAIN
REPORT DATE	FEBRUARY 2021

ITEM NO MPTSE70221

APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 2153, 32 BLADE STREET, CAMELOT, HAGLEY

1 EXECUTIVE SUMMARY

Property description	Erf 2153, Hagley
Property address	32 Blade Street, Camelot
Site extent	253m ²
Current zoning	General Residential Zone 1 (GR1)
Current land use	Dwelling house, unauthorised house shop.
Overlay zone applicable	None
Submission date	19 November 2020
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, unauthorized house shop operating from the existing garage.
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?	Notice was served on 19/06/2019

2 DECISION AUTHORITY

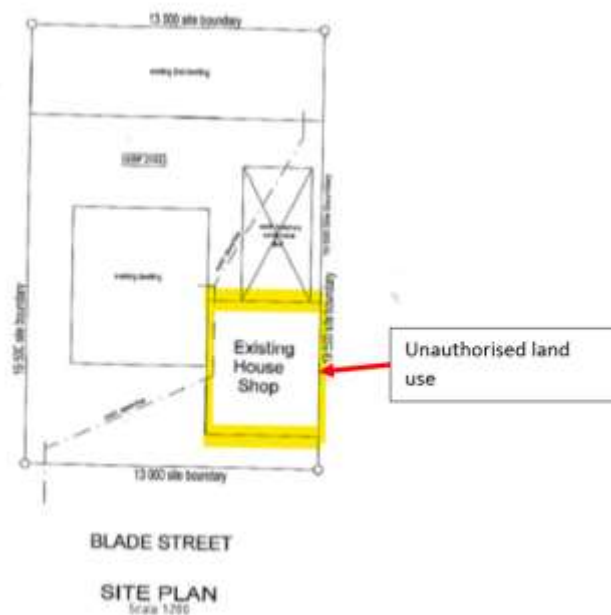
For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

- 3.1 The subject property, namely Erf 2153, is situated in the residential suburb of Camelot, Hagley. The subject property is zoned General Residential 1 in terms of the Development Management Scheme and measures approximately 253m². Due to the property falling outside of a group housing scheme, development rules of Single Residential 1 zone applies.

The immediate surrounding environment is predominantly residential in nature comprising of similar zoned erven. **(see Annexure A).**

- 3.2 As a result of the unlawful land use in the form of a house shop that has been operating from the existing garage, an application for the determination of an administrative penalty is referred to the Municipal Planning Tribunal (MPT) for decision **(see Annexure B).**



An administrative penalty is required because Item 21(c) of the Development Management Scheme is contravened. House shops are only permitted in the SR1 zone with consent from Council.

The owner was served with a section 126 compliance notice in terms the MPBL, by land use enforcement to compel compliance. The compliance notice was served on the owner on 19 June 2019 and the expiration date was 19 July 2019. When the property inspector conducted a follow up inspection, it was found that the transgression was continuing unabated and that the owner reneged on submitting a land use application to rectify the land use transgression. The land use enforcement case was then summarily submitted for legal action **(see Annexure C).**

4 SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation for the proposal is attached as **Annexure D** and may be summarized as follows:

- The owners claim that a previous temporary departure was approved and that the consultant misled them at the time and advised them it was not required to obtain further approval, as a result of the temporary departure lapsing.
- The purpose of the application is to regularize the house shop and ensure the continued operation thereof.
- The extent of the house shop will not have a significant impact.

5 ASSESSMENT OF APPLICATION

- 5.1 In terms of section 129(7)(b) of the By-Law, an administrative penalty for the 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

$$\frac{\text{Total Municipal Value of property } R746\,000,00}{\text{Total area of property } (253\text{m}^2)} \times \text{Total Unlawful Area } (31\text{m}^2) = R\,91\,407,00$$

An amount which is not more than 100% of R91 407.00 may be imposed as an administrative penalty.

- 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 subject property is situated within a predominantly residential neighborhood, where the properties are developed with single story buildings. The land use contravention is for using the existing garage as a house shop without obtaining a land use approval, prior to commencement. The area is primarily residential and is compatible with certain non-residential land uses, such as places of instructions/worship, house shops, welfare/crèche facilities and other associated live, work, and play activities.

Duration – It is not clear as to exactly how long the unlawful land use has been in operation, but as a notice was served to cease the unauthorised work in June 2019, it is clear that the use has been in operation for at least 18 months. The owner claims a temporary departure was previously approved for a house shop and that he was misled by the consultant at the time stating no new

applications will be required. It is to be noted that no land use approval relating to a temporary departure could be found on the Council records.

Upon seeking clarification on the exact duration of the contravention, the applicant could not recall exactly when the use commenced, but stated that he thought that a temporary departure was approved around 2011/2012, and expired around 2016/2017.

The duration is therefore likely to be somewhere between 3 years (when the applicant claims the temporary departure lapsed), and 18 months (when the compliance notice was served).

Gravity – The use (house shop) is seen to be compatible with residential uses as house shops are a common occurrence in the area.

Extent – The proposed house shop occupies 31m² of the subject property, which measures 253m², which equates to the activity occupying approximately 12% of the total extent of the subject property. This can be regarded as moderately significant.

b) The conduct of the person involved in the contravention

The owner has admitted that he was operating in contravention of the By-law, and claims he was operating lawfully as advised by the consultant at the time. The proper land use application to rectify the transgression was only submitted after being served with a section 126 compliance notice in terms of the Municipal Planning By-Law, 2015.

c) Whether the unlawful conduct was stopped

The unlawful conduct has not been stopped, hence the reason for the proposed application in terms of section 129 of the By-Law.

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

Based on the application made to rectify the unlawful land use, it is assumed the owner has not previously contravened this or any other planning by-law.

- 5.6 In view of the aforementioned considerations in terms of section 129(8), this department recommends that a **R1 500.00** administrative penalty be charged for the unauthorized land use.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 The extent of the contravention area, which is 31m² is considered moderately large (12%).
- 6.2 The nature and impact of the unauthorized land use is considered minor, given its extent and impact on the surrounding even.

- 6.3 The current owner has taken the necessary steps to rectify the transgression and has not previously contravened any By-Law.
- 6.4 The applicant only submitted the required applications after being served with a section 126 compliance notice in terms of the MPBL, 2015.
- 6.5 The duration of the contravention is unclear, but is between 18 months and 3 years. The contravention is therefore considered to be longstanding.

7. RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty to the amount of **R1 500** be determined in terms of section 129 of the City of Cape Town Municipal Planning Amendment By-Law, 2019, in respect of the unauthorized land use (house shop), on Erf 2153, 32 Blade Street, Camelot, Hagley

8. ANNEXURES

- Annexure A Locality Plan
 Annexure B Building Plan indicating area of contravention
 Annexure C Section 126 Compliance Notice
 Annexure D Applicant's Motivation
 Annexure E Municipal Valuation



Section Head : Land Use Management

Name Danette de Klerk

Tel no 079 286 9219

Date 3 February 2021



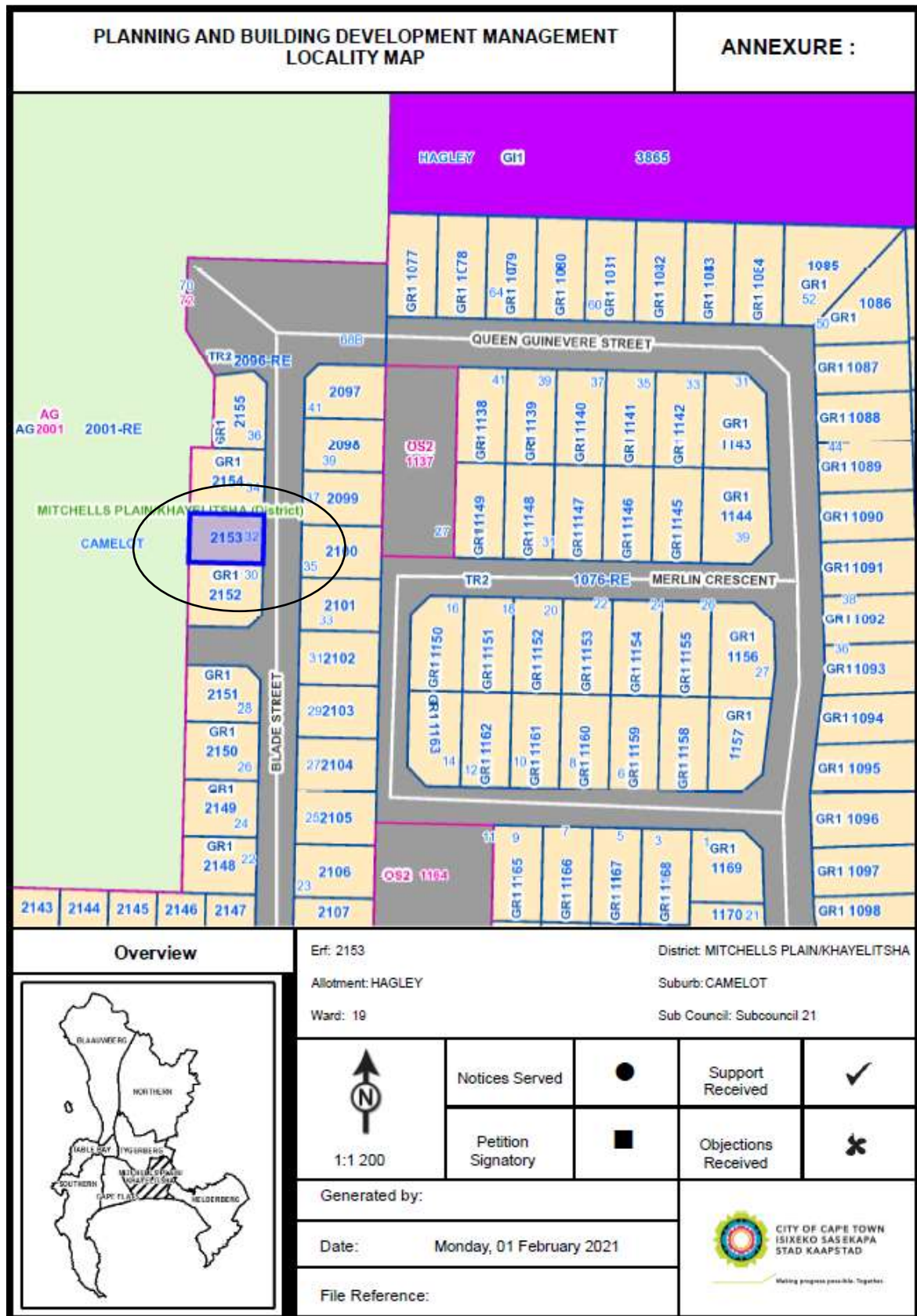
District Manager

Margot Muller

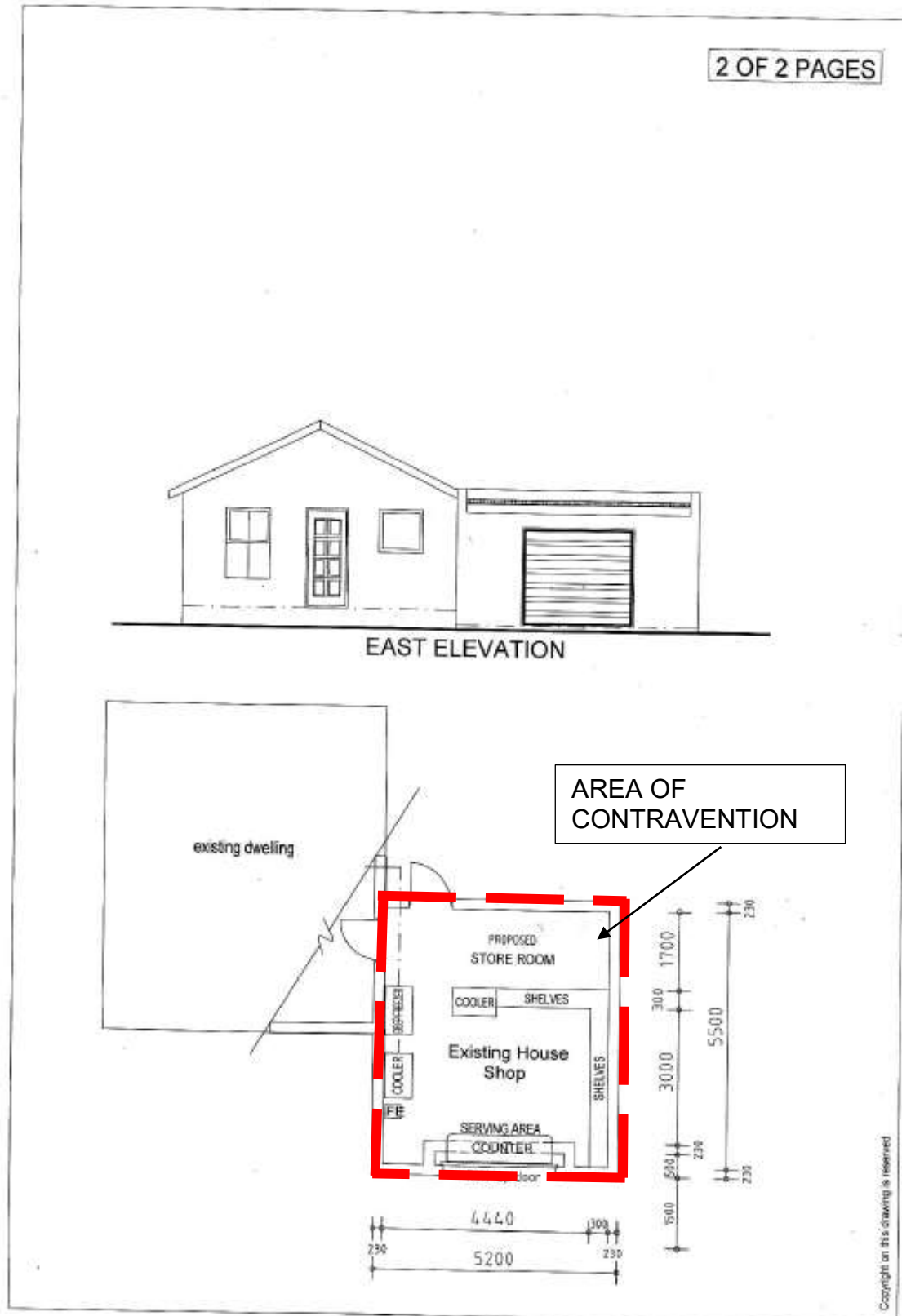
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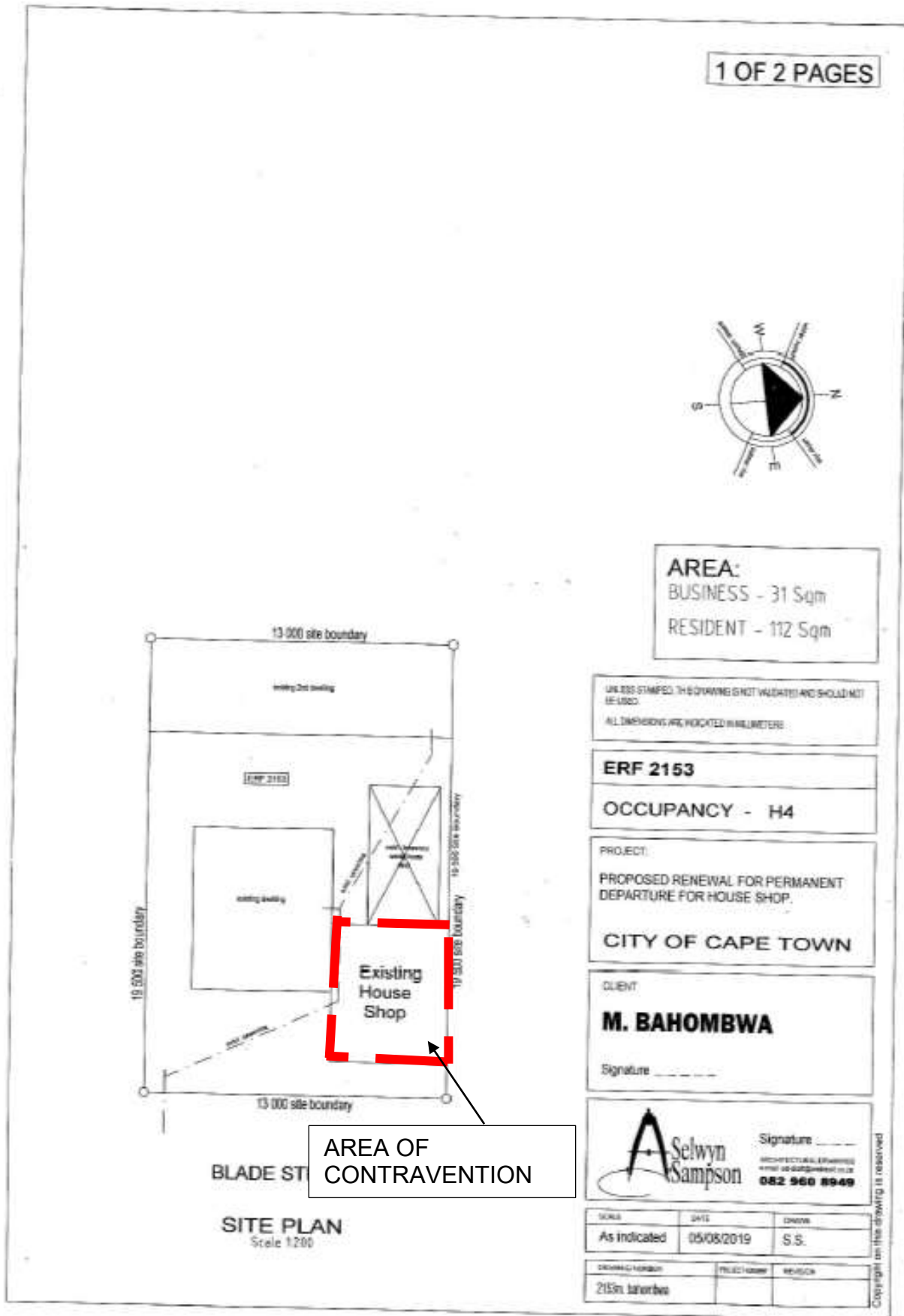
7 February 2021

ANNEXURE A: LOCALITY MAP




ANNEXURE B: BUILDING PLAN INDICATING AREA OF CONTRAVENTION





ANNEXURE C: SECTION 126 COMPLIANCE NOTICE



CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

Sticks & Stones Complex
Nkomo Street
Khayelitsha
7784
P.O. Box 1000 7520
Ask for: Warren Langerman
Tel: (021) 340 1194
Cell: 071 429 2796
Email: Warren.Langerman@capetown.gov.za
Webmail: <http://www.capetown.gov.za>
Filename: Land Use Management Enforcement
Notice.doc

PERSONAL SERVICE / REGISTERED MAIL

Mr. MAHONENWA BAHOMSWA
32 Blade Street
Camelot
Hagley
7100

Dear Sir / Madam:

COMPLIANCE NOTICE IN TERMS OF SECTION 126 OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015:

You are the occupier/ operator of **Erf 2153** situated **32 Blade street, Camelot, Hagley**

An inspection carried out on **19 June 2019** indicated that you are allowing a **house shop** from the abovementioned property.

The property is zoned **General Residential 1** in terms of the development management scheme which constitutes schedule 3 of the City of Cape Town Municipal Planning By-law, 2015 ("the By-Law

The Activity is in contravention with **zoning of the property which is General Residential 1 (GR1)**

Section 35(2) of the By-Law provides that:

35(2) No person may use or develop land unless the use or development is permitted in terms of the zoning scheme or an approval is granted or deemed to have been granted in terms of this By-Law.

and/or

35(3) No person may contravene or fail to comply with a condition of approval imposed or deemed to have been imposed in terms of this By-Law.

In terms of section 133 of the By-Law, a person is guilty of an offence if the person-

- (a) contravenes a -
 - (i) *decision taken or a condition imposed or deemed to have been taken or imposed in terms of this By-Law;*
 - (ii) *provision of the development management scheme;*
 - (iii) *uses land in a manner other than permitted by the development management scheme;*
 - (iv) *compliance notice issued in terms of section 126; or*
 - (v) *directive issued in terms of section 128.*

You are hereby instructed to cease the unlawful conduct and to comply with the provisions of the By-Law/ zoning of the property **within 30 days by 19 July 2019.**

www.capetown.gov.za

Making progress possible. Together.

2

In terms of section 133(2) of the By-Law, a person is liable to a fine of R600 000.00 or imprisonment not exceeding 20 years, or to both a fine and such imprisonment.

In terms of section 133(4) of the By-Law, an owner -

(a) who permits their land to be used, or fails to take reasonable steps to ensure that their land is not used in a manner which constitutes an offence in terms of this By-Law is guilty of an offence and upon conviction is liable to the penalties contemplated in subsection (2).

The City may, in the event of non-compliance with this notice, take one or more of the following measures -

- (i) if relevant, take steps contemplated in section 127 to withdraw an approval for a temporary departure or an approval granted for a limited period of time;
- (ii) take steps contemplated in section 128 to issue a directive in the terms specified in the notice;
- (iii) apply in terms of section 129 for the determination of an administrative penalty;
- (iv) apply to a competent court for appropriate relief including the costs of the application; and
- (v) institute a criminal prosecution.

Note that in terms of section 130 of the By-Law, you may apply to the City for the necessary approval.

Yours faithfully


Warren Langerman
 Assistant Property Inspector

for **DIRECTOR : Urban Development Authority**

Received by _____
 Signature _____
 Capacity _____
 Date _____
 Served by **Warren Langerman**
 Signature 
 Capacity **Assistant Property Inspector**
 Date **17/6/2019**

*Achmat writes
 in shop
 Hukel to sign*

ANNEXURE D: APPLICANT'S MOTIVATION

MOTIVATIONAL REPORT FOR AN ADMINISTRATIVE PENALTY IN TERMS OF SECTION 129(R) OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 IN RESPECT OF ERF 2151, 32 BLADE STREET CAMELOT, LOCATED IN THE HAGLEY TOWNSHIP, CITY OF CAPE TOWN JURISDICTION

1 INTRODUCTION

The report serves to motivate the application for the determination of an administrative penalty in terms of the City of Cape Town Municipal Planning By-Law, 2015 on the Erf 2151 (hereafter known as the subject concerned). The proposal involves an unauthorised land use (house shop) that needs to be regularised on the subject concerned as stipulated in item 129 of the MPBL, 2015.

2 PROPERTY DETAILS

2.1 The following documents are attached:

- Application Form
- Title Deeds
- Power of Attorney
- Proposed Site Development Plan's (SDP's)

3. OWNERSHIP

The owner/s of the subject concerned have authorised **Aphiwe Diba** to act on their behalf to submit the application, and an attached POA is attached to this report.

4. NATURE OF APPLICATION

The proposal involves an unauthorised land use (house shop) operating from existing garage has been converted into a house shop measuring 31m/2 in extent.

5. (8) When determining an appropriate administrative penalty, the Municipal Planning Tribunal must consider at least the following factors –

- (a) the nature, duration, gravity and extent of the contravention;

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- (b) the conduct of the person involved in the contravention;
- (c) whether the unlawful conduct was stopped; and
- (d) whether a person involved in the contravention has previously contravened this By-Law or a previous planning law.

Nature: The land use contravention is for using a portion of the subject property (31 m² thereof only) as a house shop without obtaining a land use approval, from locality Council to operate the house shop from portion the garage.

Duration: According to the owners of the subject concerned when interviewing them they stated that a temporary land use departure has recently expired which is less than 12 months and the owners of the site was misled by the previous consultant that other application was no need to regularise the house shop.

Gravity: None of the neighbours complained during the construction of the double storey dwelling house. The reason for submitting the proposed application is to regularise the proposed unauthorised building work on the subject concerned.

Extent of contravention: The amount to 31 m² off the total extent of the subject concerned which is not to have a significant impact on the remaining portion of the subject concerned.

6. The conduct of the person involved in the contravention;

The owners are in the process of submitting both the land use application as well as the aforesaid administrative penalty.

7. Whether the unlawful conduct was stopped;

The construction of the building was completed before the building where submitted to Council.

8. Whether a person involved in the contravention has previously contravened this By-Law or a previous planning law.

- No.

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9. CONCLUSION

It can be concluded that the owner/s of the subject concerned have made the necessary statutory application to comply with the relevant By-Law once the contraventions were brought to their attention by **Aphiwe Diba** in order to regularise the unauthorised house shop on the subject concerned. Lastly the contraventions are not considered to have nor pose an adverse impact on the surrounding residential area. It is therefore, required that the administrative penalty be waived and further requires the authorised official and Municipal Planning Tribunal to impose a minimal fee on the contravention done on the premises.

ANNEXURE E: MUNICIPAL VALUATION

Usage Code	A02
Usage	Two dwelling residential
Area (Calculated)	253.58 m2
Total Value	746000
Valuation Year	20190701
Approval Date	0000-00-00
Registered Date	2006-06-22
Purchase Date	2005-07-05
Purchase Price	74000,0
Title Deed Number	T44753/2006
Business Partner Nr	1001632525
Owner Title	Mr.
Owner Name	MAHONENWA BAHOMBWA
Owner First Name	MAHONENWA
Language	EN
Owner Postal Address	49 RUBY STREET BLUE DOWNS 7100
ID Number	8007026144185(SA Identity Doc, expired)
Rate payer Name	MAHONENWA BAHOMBWA
Rate payer Street Address	RUBY STREET 49 BLUE DOWNS ZA
Rate payer Postal Address	49 RUBY STREET BLUE DOWNS 7100
key	486587
Physical Address	32 BLADE STREET, CAMELOT
Erf No	2153