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REPORT TO MUNICIPAL PLANNING TRIBUNAL

CASE ID	70474962				
CASE OFFICER	Liza Volkwyn				
CASE OFFICER PHONE NO	021 684 4387				
DISTRICT	Cape Flats				
REPORT DATE	16 October 2019				
INTERVIEW REQUESTED	APPLICANT OBJECTOR(S)	YES		NO	

ITEM NO **MPTSW70/11/19**

APPLICATION FOR ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF REMAINDER ERF 59858, CAPE TOWN, 16 BALMORAL ROAD, LANSDOWNE

1 EXECUTIVE SUMMARY

Property description	Remainder Erf 59858, Cape Town
Property address	16 Balmoral Road, Lansdowne
Site extent	695m ²
Current zoning	Single Residential 1
Current land use	Dwelling house
Overlay zone applicable	None

Submission date	30 September 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Unauthorised carport
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	No

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?	2981
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2 DECISION AUTHORITY

For decision by the Municipal Planning Tribunal.

3 BACKGROUND / SITE HISTORY

Remainder Erf 59858, Cape Town ("the property") is zoned Single Residential 1 in terms of the Development Management Scheme ("DMS"). Unauthorised building work in the form of a carport exists on the property up to 0,0m of the 5,0m street boundary building line on Balmoral Road. The unauthorised carport contravenes Item 22(f)(iii) of the DMS.

The application for the determination of an administrative penalty and the rectification application for a permanent departure were submitted simultaneously.

4 SUMMARY OF APPLICANT'S MOTIVATION

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

- The property was purchased in 2018.
- Following a request for copies of approved plans and a survey of the property, the architect discovered that the existing carport is an unauthorised structure.
- The owners want to rectify the contravention.

5 ASSESSMENT OF APPLICATION

5.1 As indicated above, the unauthorized building work is in contravention of the Development Management Scheme.

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

5.2.1 Unauthorised building work

$$\text{Value per m}^2 \times \text{Total Unlawful area (m}^2\text{)} = \text{R } 2982$$

$$\text{Value / m}^2 = \text{R}1330.00$$

$$\text{Total Unlawful Area} = 32,5\text{m}^2$$

$$\text{R} = \text{R}43225.00$$

An amount which is not more than 100% of R43225.00 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: An unauthorised carport exists within the 5,0m street boundary building line up to 0,0m in contravention of Item 22(f)(iii) of the DMS.

Duration: According to the Land Use Management Application Form, the unauthorised carport has existed for 1 year. However, Council's aerial photographs show that the carport has existed since at least the year 2007.

Gravity: The contravention of the 5,0m street boundary building line departure is not considered to threaten the health, safety and wellbeing of the surrounding community. Therefore, the gravity of the contravention is considered to be low.

Extent: The extent of the contravening portion is $\pm 32,5\text{m}^2$.

b) The conduct of the person involved in the contravention

Property ownership records indicate that the property was purchased by the current owners on 23 November 2017 and that the property was registered on 19 March 2018. This information corroborates the applicant's written motivation that the carport was erected prior to the current owners purchasing the property. Further, the applications to rectify the contraventions were submitted on the owner's accord.

c) Whether the unlawful conduct was stopped

The unauthorised carport is a complete structure.

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 property owner has not contravened the MPBL or another planning law in the past.

- 5.4 Taking the above considerations into account together with the fact that the current property owners were not responsible for the contravention, it is recommended that no administrative penalty be charged.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1. A portion of an existing unauthorised carport contravenes the Development Management Scheme.
- 6.2. Property ownership details indicate that the property was purchased by the current owners in 2017. However aerial photographs reflect that the carport was erected 10 years prior. The current owners were therefore not responsible for the contravention.
- 6.3. The owners have submitted the required applications to rectify the contravention.

7. RECOMMENDATION

In view of the above, it is recommended that:

- a) That an administrative penalty in the amount of R0.00 be determined in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015 in respect of Remainder Erf 59858, Cape Town.

ANNEXURES

Annexure A	Locality maps
Annexure B	Building plan
Annexure C	Applicant's motivation
Annexure D	Aerial photographs

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A McCann

**Section Head : Land Use
Management**

Name A McCann

Tel no 021 6844341

Date 22 October 2019

Comment

Chad Newman

District Manager

Name Chad Newman

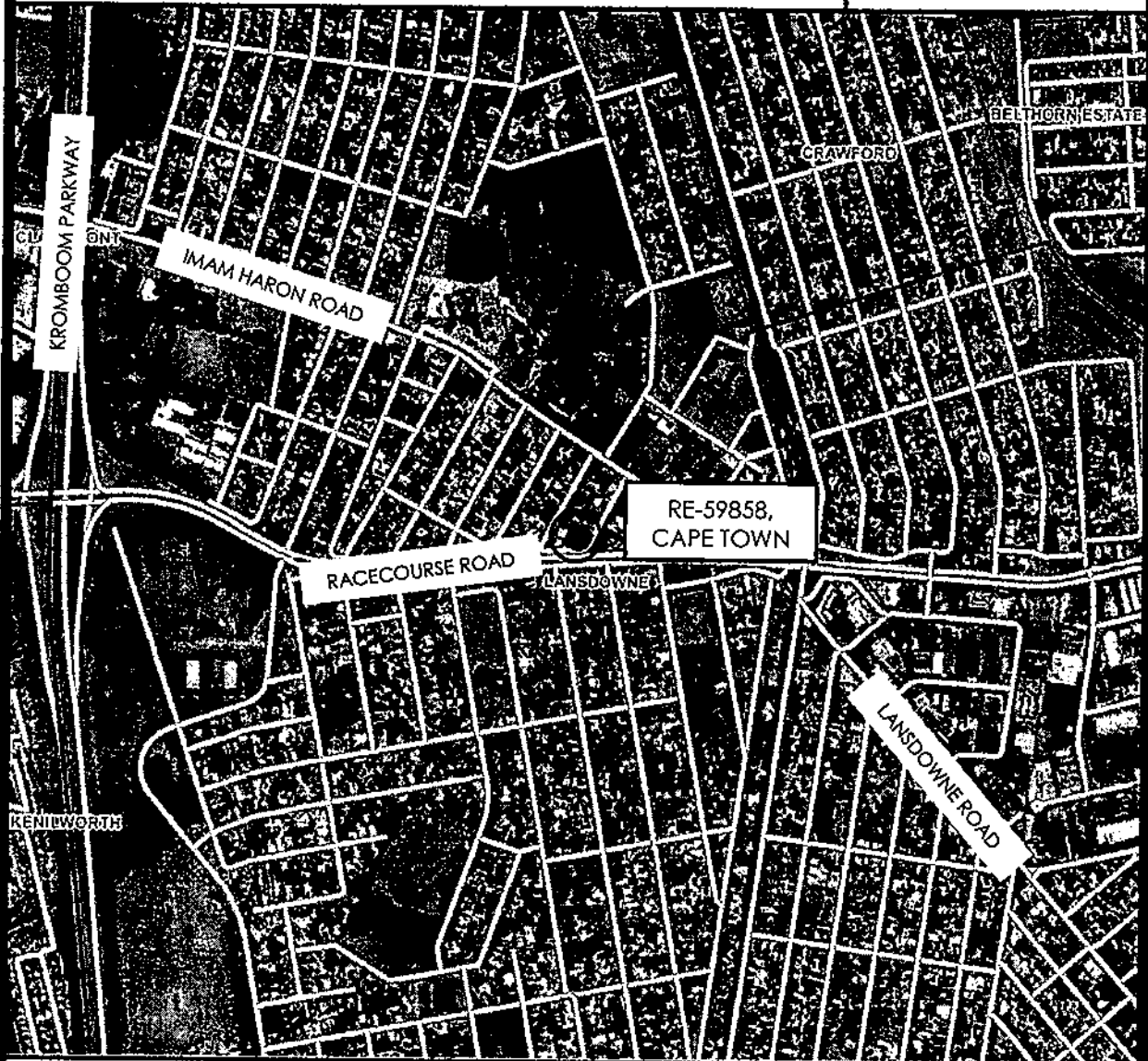
Tel no 021 648 4310

Date

Comment

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT
LOCALITY MAP

ANNEXURE :



Overview

Erf: 59858-RE

District: CAPE FLATS

Allotment: CAPE TOWN

Suburb: LANSDOWNE

Ward: 60

Sub Council: Subcouncil 17



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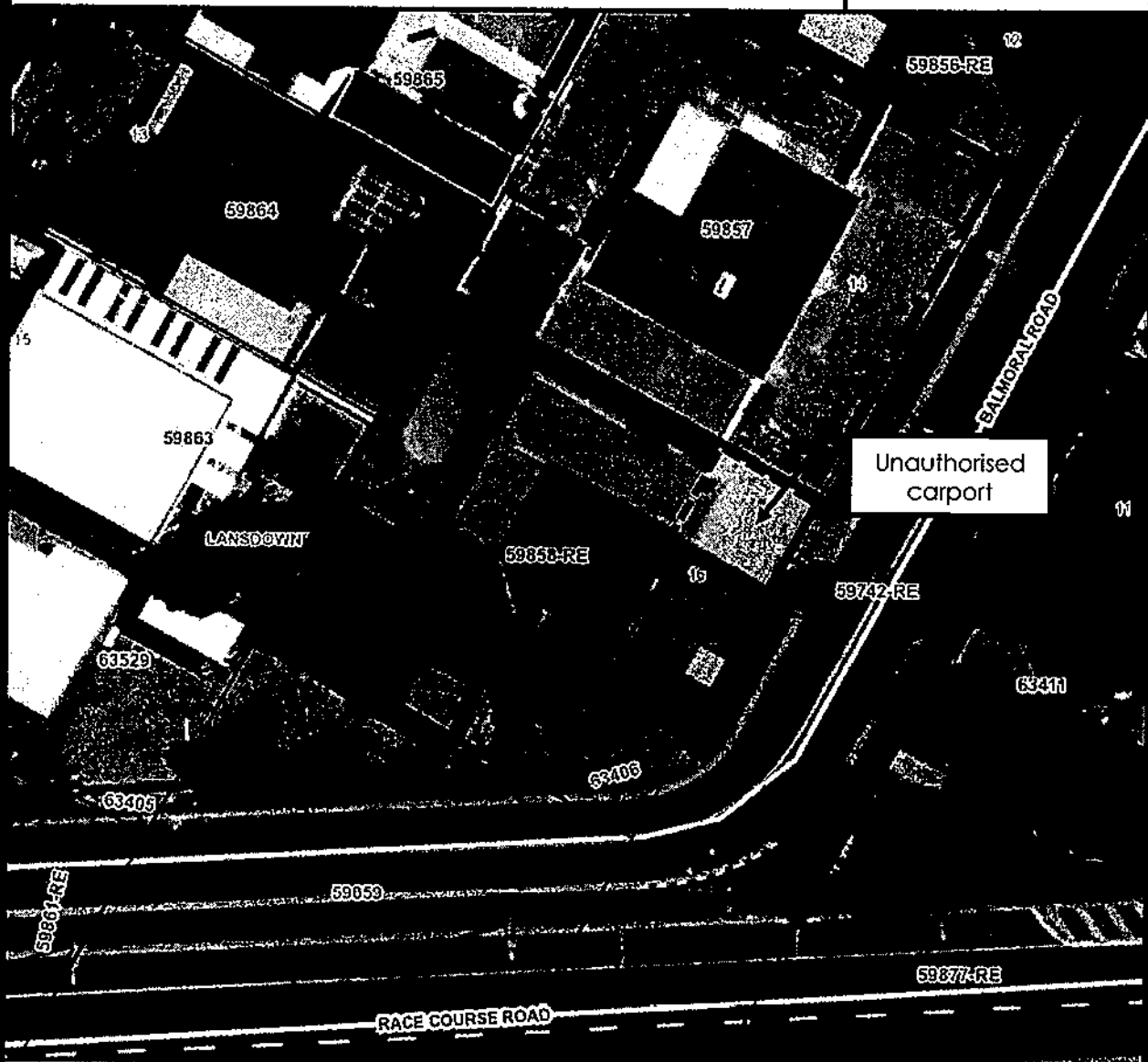


CITY OF CAPE TOWN
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STAD KAAPSTAD

Making progress possible. Together.

**PLANNING AND BUILDING DEVELOPMENT MANAGEMENT
LOCALITY MAP**

ANNEXURE :



Overview

Erf: 59858-RE

District: CAPE FLATS

Alfortment: CAPE TOWN

Suburb: LANSDOWNE

Ward: 60

Sub Council: Subcouncil 17



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ANNEXURE C: APPLICANT'S MOTIVATION

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ADMINISTRATION PENALTY MOTIVATION

*Land Use Management
Building Survey Department
City of Cape Town
Athlone District Office*

*Mr. Y. U. & Mrs B. V. I. Chithra
16 Balmoral Road
Lansdowne
Erf 59858*

09/09/2019

Re: Veranda

Attention: To whom it may concern

We hereby submit the motivation letter regarding the attached Administrative Penalty Application to the City of Cape Town- Athlone District Office. Reference is only made to carport, garage façade, as indicated on plan AFP 150519 for this application.

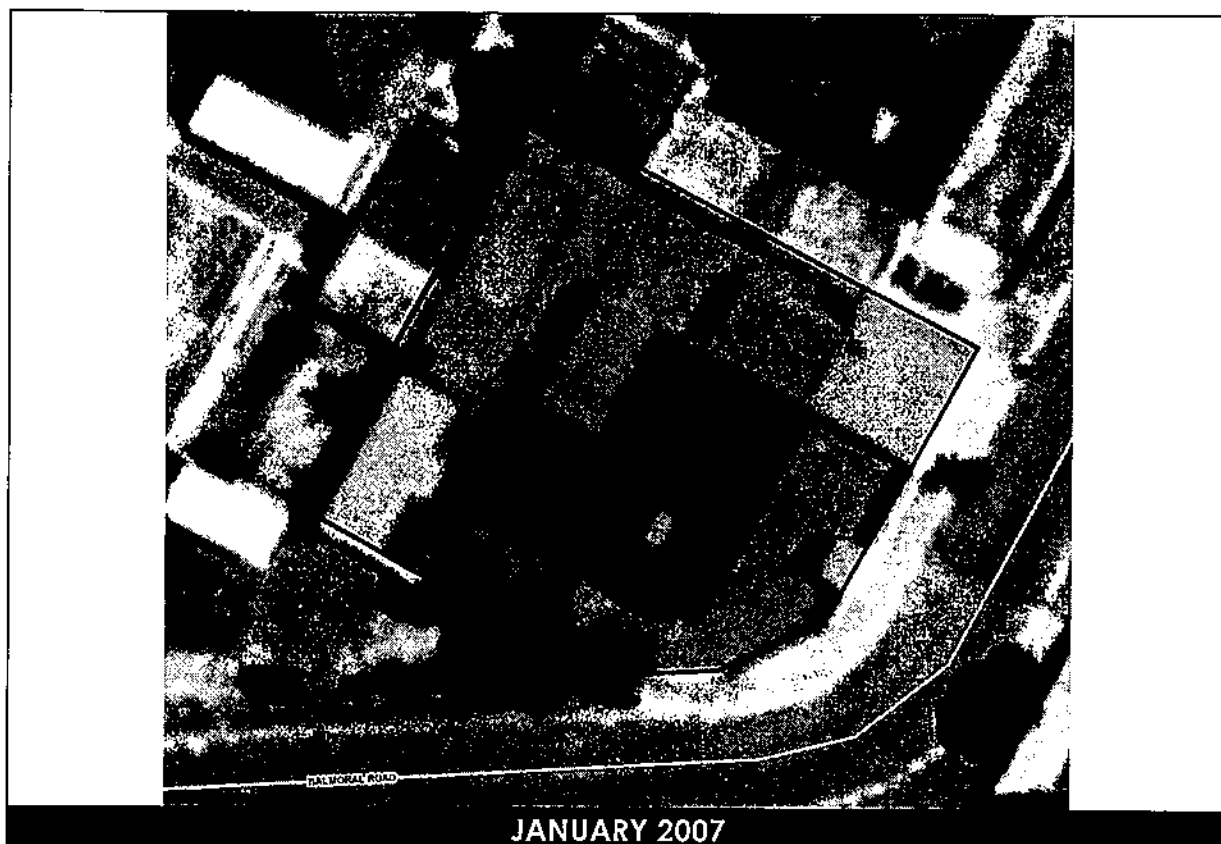
We bought the property last year. We requested the previous copies of the as built plans from Mr. Shaw as we intend doing improvements to the property. Our architect during a site inspection and survey discovered that not all the structures were reflected on the approved plans. We again approached Mr. Shaw to check whether he could find the missing plans but to no avail. We accept that the AFP application is required to allow us to formalize the structure for the missing plans. We therefore thank you in anticipation of your positive response for understanding and accepting our sincere attempts to rectify and gain approval of the structure as a prerequisite and part of a further development on the property. The second application which is the Land Use Application will therefore be followed after this application is cleared.

Your Sincerely

Mr. Y. U. & Mrs B. V. I. Chithra

ANNEXURE D: AERIAL PHOTOGRAPHS

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