



REPORT TO: **MUNICIPAL PLANNING TRIBUNAL**

ITEM NO

MPTSE53/06 /19

Case ID	70456666
Case Officer	Mark Rossouw/ A Allie
Case Officer phone number	021 360 1195
District	MITCHELLS PLAIN/ KHAYELITSHA
Report date	03/06/2019

APPLICATION FOR AN ADMINISTRATIVE PENALTY IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL) IN RESPECT OF ERF 7095, 1 DUBLIN CLOSE RONDEVLEI, MITCHELLS PLAIN

1 EXECUTIVE SUMMARY

Property description	7095, Weltevreden Valley
Property address	1 Dublin Close, Rondevlei, Mitchells Plain
Site extent	293.48m ²
Current zoning	Single Residential Zone 1 (SR1)
Current land use	Dwelling house and unauthorised ecd centre
Overlay zone applicable	None
Submission date	10 May 2019
Subject to PHRA / SAHRA	No
Any unauthorised land use / building work?	Yes, unauthorised ecd centre and internal alterations within the structure.
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 ERF 7095 (hereafter known as the subject property) is zoned single residential zone 1 and measures 293.48m² in extent **(see Annexure A)**. A portion of the existing building and unauthorized additions measuring 160m² is being used as an unauthorised place of instruction (ecd centre) **(see Annexure B)**. The immediate surrounding properties are predominantly zoned single residential zone 1.
- 3.2 In order to regularise the unauthorised ecd centre on 10/05/2019 an application for a consent use in terms of sections 42(i) of the City of Cape Town Municipal Planning By-Law was submitted on behalf of the owner, Mr Isaacs.
- 3.3 An administrative penalty is required because items 21 and 7 of the Municipal Planning By-Law, 2015 is being contravened. Item 21 is contravened because an ecd centre (place of instruction) is only permitted as a consent use in the single residential 1 zone. Item 7 is also contravened because the part of the dwelling, from which the ecd centre is operating, has a street and common boundary setback closer than 5 metres (there is a 5 metre setback requirement in the CO1 zoning as per the item 7 requirement).

4 SUMMARY OF APPLICANT'S MOTIVATION

The owner's motivation **(see Annexure C)** may be summarised as follows:

- The ecd centre has been operating for 3 years.
- The applicant was not aware of the fact that he required a land use approval to operate the ecd centre.
- The ecd centre were started to provide an income for his family.

5 ASSESSMENT OF APPLICATION

- 5.1 As indicated above, the unauthorised use is in contravention of item 21(c) and item 7 of the Development Management Scheme.
- 5.2 In terms of section 129(7)(a) of the By-Law, an administrative penalty for the building work contravention may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out.

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

5.2.1 Unauthorised land use

$$\frac{R780\,000.00}{293.48m^2} \times 160m^2 = R425\,241.92$$

An amount which is not more than 100% of R425 241.92 may be imposed as an 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 – The land use contravention is for using a portion of the existing building on the subject property (approximately 160m²) as a place of instruction without obtaining a consent use, prior to operating. The ecd centre is located in a pre-dominantly residential neighbourhood. The setback departures required are 0.0m in lieu of 5m due to the change in use to an ecd centre.

Duration - The ecd centre has been operating for the past 3 years, hence the duration of the unauthorised can be considered to be longstanding.

Gravity – The gravity of the ecd centre is considered significant because young children have been accommodated without the necessary NBR approval as well as the clearance from health and the fire department.

Extent – The contravention is approximately 160m² in extent and the ecd centre accommodates 56 children. The activity occupies more than 50% of the total extent of the property and can therefore be regarded as being large in extent.

b) The conduct of the person involved in the contravention

The consent use and administrative penalty application were both submitted by the owner on becoming aware of the need to regularize the ecd centre.

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. It is considered unrealistic that the ecd centre should cease operating since no alternate facility is available to accommodate the children.

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 subject property has not previously contravened this By-Law or any other planning law. **However, the application indicates 96m² and when recalculated using the plan dimensions it came to approximately 160m² is being used.**

- 5.4 In view of the aforementioned considerations in terms of section 129(8) and the recent amendments to section 129 this department recommends that an approximate **R1000.00** administrative penalty be charged for the unauthorised land use and **R0** be charged for the structure being closer than 5m as it is seen as a technical departure.

6 REASONS FOR DECISION

Reasons for the recommended decision may be summarised as follows:

- 6.1 No record could be found of previous contraventions of the By-Law.
- 6.2 The applicant has taken the necessary steps to regularise the unauthorised ecd centre.
- 6.3 The ecd centre has been operating for a long period (3 years).
- 6.4 The gravity of the proposal is considered **significant** because young children have been accommodated without the required National Building Regulations being adhered to as well as health and fire clearances.

7 RECOMMENDATION

In view of the above, it is recommended that:

- a) An administrative penalty in the amount of **R1000.00** for the unauthorised land use (ecd centre) and **R0** for the unauthorised building work within the 5m building line in terms of section 129 of the City of Cape Town Municipal Planning By-Law, 2015, in respect of Erf 7095, Rondevlei, Mitchells Plain, **be approved** in terms of Section 98(b)(i) of the City of Cape Town Municipal Planning By-Law, 2015,

ANNEXURES

Annexure A	Locality Plan
Annexure B	Plan of contravention
Annexure C1	Applicant's motivation
Annexure C2	Application form extract
Annexure D	Municipal valuation



**Section Head : Land Use
Management**

Name M Muller

Tel no 021 360 1132

Date 09 June 2019

Comment



District Manager

Name M Muller

Tel no 021 360 1132


Date 09 June 2019

Comment

None

Case ID 70456666

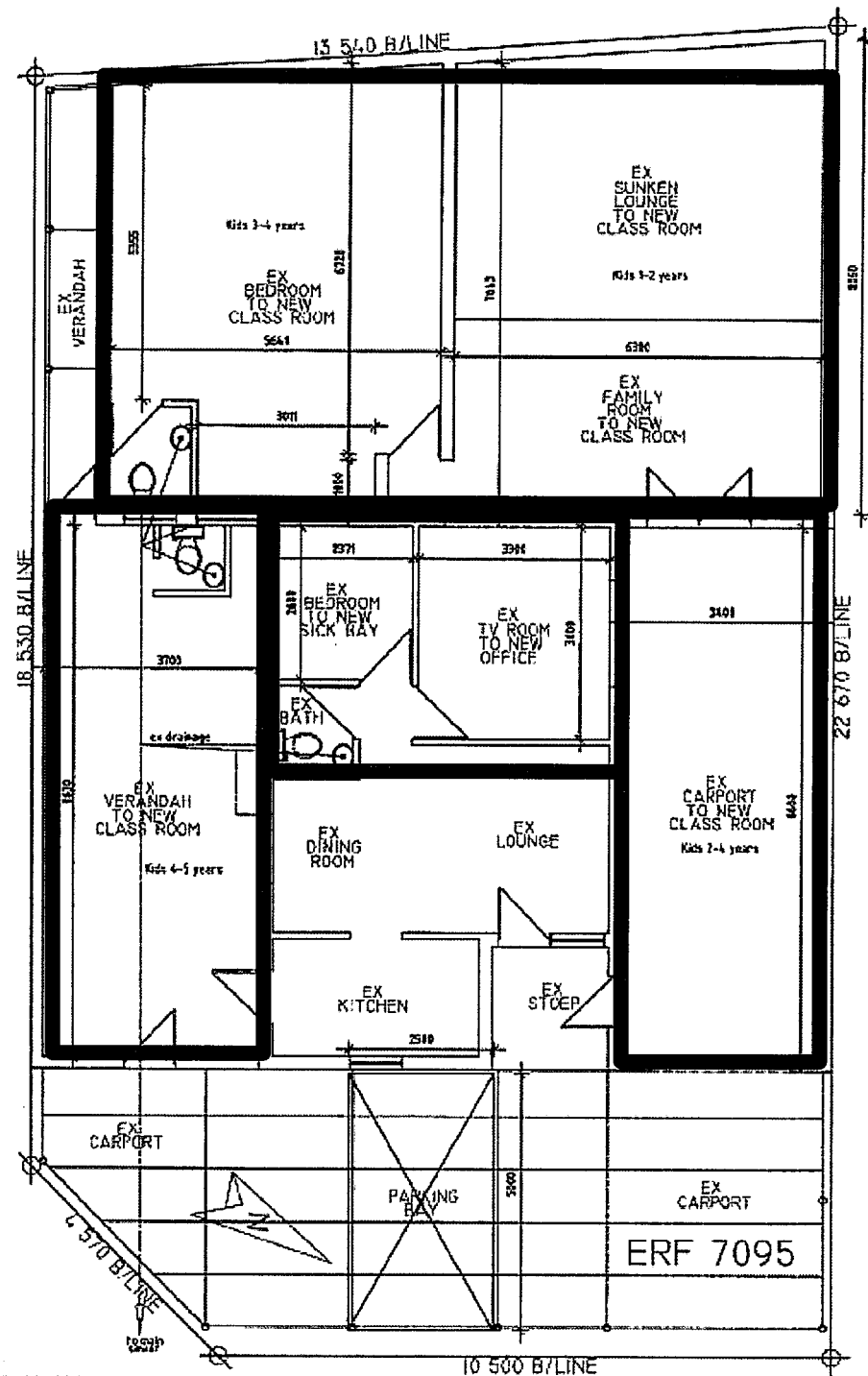
ANNEXURE A: LOCALITY MAP

PLANNING AND BUILDING DEVELOPMENT MANAGEMENT LOCALITY MAP		ANNEXURE :		
Overview	Erf Allotment: Ward:		District Suburb: Sub Council	
	 1.150	Notices Served	<input checked="" type="checkbox"/>	Support Received
		Petition Signatory	<input type="checkbox"/>	Objections Received
	Generated by:		 CITY OF CAPE TOWN ISIXE KO SASEKAPA STAD KAAPSTAD <small>Maatjies gelykheid, vrede en toekoms</small>	
	Date: Wednesday, May 22, 2019			
File Reference:				

1160

ANNEXURE B: PLAN OF CONTRAVENTION

PROPOSED CRECHE ON ERF 7095 FOR MR D D ISAACS OF
NR 1 DUBLIN CLOSE RONDEVLEI PARK WELTEVREDEN VALLEY



PLAN NR :17095
DATE :SEPT 2018

NR 1 DUBLIN CLOSE
SITE PLAN LAYOUT 1:100

ANNEXURE C1: APPLICANT'S MOTIVATION

PROPOSED ECD ERF 7095 MR AND MRS ISAACS 1 DUBLIN CLOSE RONDERVLEI
M/P

To whom it may concern

Comment on Imposition of Administrative Penalty

- The reason for operating the ECD was to generate an income for myself and my family.
- I have only 4 employers working in my ECD
- I was genuinely unaware that permission from the City to operate a ECD was needed.
- As soon as that I was made aware of the contravention I submitted this Application.
- This is the first instance I've contravened the By-Law or previous law.
- The duration of the contravention is 3 years.
- The extent of the of the contravention is small, the nature of the contravention is low key and the gravity is not serious.
- The unlawful conduct has not been stopped as it is a source of income to provide for my family.
- In view of the abovementioned considerations I humbly request that an administrative penalty equal to minimum administrative penalty be charged.

I thank you in advance

SECTION H: ADMINISTRATIVE PENALTY

The following is required for an application for the determination of an administrative penalty made in terms of section 42 (r) of the MPBL.
Give a description of the land use or building work / structure(s) that are in contravention on the property.

5/6

Provide the extent(s) in m² of the property used for the unlawful use activity, and unlawful building work / structure(s) that contravene the MPBL. (Indicate extent(s) on a building plan / map / plan / diagram)

5/6

Describe the duration of the contravention(s).

3 years

Has the unlawful activity ceased? ☐ Yes ☒ No

If yes, provide the date when the activity ceased / /

Has the owner / person previously contravened the MPBL or a previous Planning Law? ☐ Yes ☒ No

If yes, please provide more details below.

Provide the municipal valuation of the erf. R 7800000

ANNEXURE D: MUNICIPAL VALUATION

Usage Code	A01
Usage	One dwelling residential
Area (Calculated)	293.48 m2
Total Value	780000
Valuation Year	20160701
Approval Date	0000-00-00
Registered Date	2002-11-14
Purchase Date	2002-08-31
Purchase Price	135000,0
Title Deed Number	T96692/2002
Business Partner Nr	1000994696
Owner Title	Mr.
Owner Name	DANIEL DEREK ISAACS
Owner FirstName	DANIEL DEREK
Language	EN
Owner Postal Address	1 DUBLIN CLOSE RONDEVLEIPARK 7785
ID Number	7303185085082(SA Identity Doc, expired)
Rate payer Name	DANIEL DEREK ISAACS
Rate payer Street Address	DUBLIN CLOSE 1 RONDEVLEIPARK ZA
Rate payer Postal Address	1 DUBLIN CLOSE RONDEVLEIPARK 7785
key	417125
Physical Address	38 LVERPOOL CRESCENT, RONDEVLEIPARK
Erf No	7095